

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-734-3680

June 20, 1988

The Honorable Phil P. Leventis
Member, South Carolina Senate
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator Leventis:

You have requested the opinion as to whether part of the Hazardous Waste Contingency Fund could be used for other purposes if the legislature made statutory amendments to the original statute that created the fund.

The Fund was created by § 44-56-160. The portion of the Fund to which your request pertains is that portion containing assessments ranging from \$1 - \$4 per ton of waste. The monies raised through those assessments, under the terms of the statute, "must be held separate and distinct within the Fund for the purpose of response actions arising from the operation of permitted land disposal facilities in this State." § 44-56-160(A).

Article I, § 5 of the South Carolina Constitution provides that "[a]ny tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied." When a statute imposing a tax provides that the funds raised thereby shall be held in a special fund and used only for a specific purpose, the courts of this State have generally held that a transfer of the funds to another purpose would violate the above constitutional provision. See, e.g., Edwards v. Osborne, 193 S.C. 158, 7 S.E.2d 526 (1940); Ward v. Cobb, 204 S.C. 275, 28 S.E.2d 850 (1944). In some instances, it has been held that the legislation creating the tax only designated its use, rather than creating a special fund, and in such cases the legislature may appropriate the funds to a use different from the one originally contemplated. See State ex rel. Brown v. Bates, 198 S.C. 430, 18 S.E.2d 346 (1941).

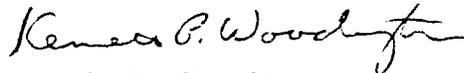
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Although the question is not entirely free from doubt, it is our opinion that § 44-56-160 creates a special fund, and indeed creates several "subfunds" within that special fund. Such being the case, the funds already raised by that Act most probably cannot be transferred to other uses by later legislative action.

I enclose copies of two prior opinions dated August 21, 1969 and January 30, 1984, which provide additional authority for the above conclusion. Please let me know if this Office can be of further assistance.

With best regards, I am

Sincerely yours,

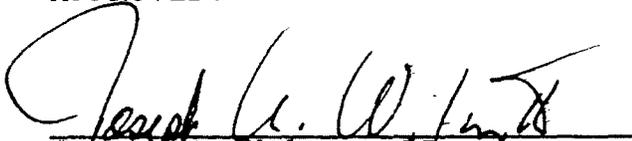


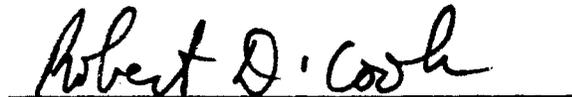
Kenneth P. Woodington
Senior Assistant Attorney General

KPW:jca

Enclosures

APPROVED:



Joseph A. Wilson, II
Chief Deputy Attorney General

Robert D. Cook
Executive Assistant, Opinions