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July 14, 1987

The Honorable John C. Lindsay
Senator, District No. 28
Post Office Box 250
Bennettsville, South Carolina 29512

Dear Senator Lindsay:

You have requested an opinion whether the Budget and Control Board has the authority to reduce the formula funding to counties and municipalities, appropriated in Section 125(I) of the 1987-88 Appropriations Act. You have advised that "there is consideration for the Budget & Control Board to apply a certain percentage reduction across the board to all line items in the Aid to Subdivision Section, so as to aggregate a sum of money sufficient to replenish all or part of the \$725,521 appropriation made by the General Assembly to Aid Planning Districts" which was vetoed by the Governor in veto number 266. It is our opinion that the Board has no authority under these circumstances to reduce the formula funding to counties and municipalities.

By way of background, certain taxes collected by the State of South Carolina are returned to the counties and municipalities through the various formulas established in the statutes authorizing these taxes.^{1/} These tax revenues for the new fiscal year were appropriated to the counties and municipalities

^{1/} See, for examples, Section 12-33-30, Code of Laws of South Carolina (1976) (alcoholic beverage taxes); Section 61-5-150 (mini-bottle revenues); Section 12-11-50 (bank tax); Section 12-21-1120 (beer and wine tax); and Section 12-27-380 (gasoline taxes). Each statute establishing a tax must be examined to determine the plan of distribution.

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in Section 125 of the Appropriations Act. That Section further provides that

The above revenues must be deposited in the General Fund of the State, and notwithstanding the amounts appropriated in the various items of this Section must be allocated and paid to the counties and municipalities of the State in conformity with the percentages or proportions of the revenues prescribed by law. (emphasis added).

§ 125.1 of the 1987-88 Appropriations Act.

Pursuant to its plenary authority the General Assembly has authorized the Budget and Control Board under certain circumstances to alter an appropriation provided for in the Act. See § 129.16 and § 129.17 of the Appropriations Act. As a matter of general law, when such authorization has been given by the legislature, the executive agency is strictly confined, in the exercise of such power, to the authority given. 81A C.J.S. "States" § 232, citing State v. Erickson, 244 P. 287 (Mont. 1926). Ultimately, the General Assembly has "the right to specify the conditions under which the appropriated monies shall be spent." State ex rel. McLeod v. McInnis, 278 S.C. 307, 314, 295 S.E.2d 633 (1982). The specific conditions set forth by the General Assembly in Section 125.1 are that the revenues from these specific taxes are to be paid into the General Fund and that the formulas as established by the various taxation statutes are to be maintained through allocations "to the counties and municipalities of the State in conformity with the percentages or proportions of the revenues provided by law." Supra, § 125.1. ^{2/} Any effort to reduce this appropriation through the mechanism provided in Section 129.16 of the Act would not be authorized because, as you noted in your letter, there has been no determination by the Board "that a deficit may occur." By the plain wording of the Act, such a determination by the Board

^{2/} The Act further provides that the actual allocation will be 85.4 percent of the allocation prescribed by law for any given revenue source. § 125.1, supra. This precise allocation further underscores the legislative intent as to the amounts to be paid out this year under the formula funded distributions.

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is a precondition to any reduction of expenditures appropriated to counties and municipalities under Section 125.16 of the Appropriations Act. An argument might be made that the Board could transfer funds out of the formula funded disbursements pursuant to Section 129.17 of the Act. Without deciding whether or under what circumstances Section 129.17 might be used to transfer funds back to the Aid to Planning Districts line item which was vetoed, we would simply point out that under a plain reading of Section 125.1 these allocations could not be diminished in this manner to take them out of "conformity with the percentages or proportions of the revenues prescribed by law." Any application of Section 129.17 to reduce the allocation to counties and municipalities would violate Section 125.1. This result would be prohibited by the cardinal principle of statutory construction which requires that an interpretation of a statute or provision (i.e., Section 129.17) should be denied if it would defeat the statute or provision being construed (i.e., Section 125.1). 73 Am.Jur. 2d "Statutes," § 269. In other words, all provisions of an act must be harmonized. Windham v. Pace, 192 S.C. 271, 6 S.E.2d 270 (1940).

For all these reasons it is our opinion that the Board has no authority under these circumstances to reduce the formula funding to counties and municipalities. Because of the time limitations imposed by your request, we have not considered any other questions relating to whether funds may be restored to Aid for Planning Districts by some other means.

Sincerely,



David C. Eckstrom
Assistant Attorney General

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