

1984 S.C. Op. Atty. Gen. 211 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-88, 1984 WL 159895

Office of the Attorney General

State of South Carolina

Opinion No. 84-88

July 26, 1984

*1 The Honorable Olin R. Phillips
Member
House of Representatives
Box 206
Gaffney, South Carolina 29340

Dear Representative Phillips:

Attorney General Medlock has referred your letter of July 10, 1984, to the Opinions Section for a response.

You have inquired whether the resident legislative delegation or the district highway commissioner would have the final decision concerning the allocation of 'C' funds for local road construction. [Section 12-27-400, Code of Laws of South Carolina](#) (1983 Cum.Supp.), appears to answer your question by requiring that a majority of the legislative delegation of the county approve the expenditure of 'C' funds. However, this Office, by an opinion dated October 24, 1979, has questioned the constitutionality of the delegation's approval of such expenditures; copies of the statute and the prior opinion are enclosed. Other problems are identified, as well: if the responsibility for approval is not with the delegation, the statute provides no other approval mechanism. See also [O'Shields v. Caldwell, 207 S.C. 194, 35 S.E.2d 184 \(1945\)](#), for other potential difficulties.

This Office has no authority to declare a statute unconstitutional. Furthermore, a statute will be presumed to be constitutional and will be interpreted so unless and until a court declares it to be unconstitutional. [University of South Carolina v. Mehlman, 245 S.C. 180, 139 S.E.2d 771 \(1964\)](#). A declaratory judgment or legislative clarification would be advisable to determine the constitutionality of the statute or to take corrective legislative measures, as may be necessary. Until such legislative or judicial action is taken, however, it would appear that [Section 12-27-400 of the Code](#) should be followed.

If we can be of further assistance, please let us know.

Sincerely,

Patricia D. Petway
Assistant Attorney General

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