

1981 WL 157785 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 18, 1981

*1 Honorable Richard W. Riley
Governor
Post Office Box 11450
Columbia, South Carolina 29211

Honorable Richard W. Riley
Chairman

Honorable Grady L. Patterson, Jr.

Honorable Earle E. Morris, Jr.

Honorable Rembert C. Dennis

Honorable Tom. G. Mangum
Members
State Budget and Control Board
Post Office Box 12444
Columbia, South Carolina 29211

Gentlemen:

You have requested an opinion from my Office regarding whether or not the following provision of [Article III, Section 36 of the South Carolina Constitution](#) is self-executing:

In the event of a year-end operating deficit, so much of the reserved fund as may be necessary shall be used to cover the deficit; . . .

In my opinion, this provision is self-executing and, accordingly, no further legislation is required in order to make use of that portion of the reserve fund necessary to cover any year-end operating deficit. See, e.g., [McCull v. Marlboro Graded School Dist. No. 10](#), 143 S.C. 120 (1928); [Brice v. McDow](#), 116 S.C. 324 (1921). That the provision is self-executing is made ever more manifest by the fact that two other provisions of [Article III, Section 36](#) expressly state that implementing legislation is required, to wit:

The General Assembly shall provide for a general fund reserve of five percent of the general fund revenue of the latest completed fiscal year. . .

The General Assembly shall provide by law for a procedure to survey the progress of the collection of revenue and the expenditure of funds. . . [Emphasis added.]

Applying the rule of statutory construction ‘inclusio unius est exclusio alterius,’ I am of the opinion that the omission of such language as ‘the General Assembly shall provide’ from the provision relating to the use of the reserve fund to cover a year-end operating deficit is intentional and that no further legislative action is required. Moreover, if implementing legislation were

required, it would already be provided by Section 11-11-120, CODE OF LAWS OF SOUTH CAROLINA, 1976 (Cum.Supp.), which provides in part:

In the event of a year-end operating deficit, so much of the Reserve Fund as may be necessary shall be used to cover the deficit; and the amount so applied shall be restored to the Reserve Fund out of future revenues and surpluses as herein provided until the five percent (5%) maximum is again reached and actually maintained.

Sincerely,

Daniel R. McLeod
Attorney General

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