

1981 WL 157880 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 22, 1981

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

Dear Governor Riley:

You have inquired as to the statutory construction of the provision added to Part I of the 1981-82 Appropriations Act as follows: Section _____. Upon the request of the Joint Appropriation Review Committee the Budget and Control Board is authorized to transfer the positions and funds appropriated in Section 14B—Finance Division for Grants and Contracts Review Unit to the Committee.

The question is whether the word ‘authorized’ means that the transfer is discretionary with the Budget and Control Board or mandatory.

While this is a complex question, and not free from doubt, it would appear that the provision is mandatory in this case.

The ordinary meaning of the word ‘authorize’ is to empower or give authority to act, which indicates discretion; but not statutory construction which is usually construed as mandatory. A summary of the law is briefly stated from Black’s Law Dictionary as follows:

Authorize. To empower, to give a right or authority to act. To endow with authority or effective legal power, warrant, or right. [People v. Young](#), 100 Ill. App.2d 20, 241 N.E.2d 587, 589. To permit a thing to be done in the future. It has a mandatory effect or meaning, implying a direction to act.

‘Authorized’ is sometimes construed as equivalent to ‘permitted’; or ‘directed’, or to similar mandatory language. Possessed of authority; that is, possessed of legal or rightful power, the synonym of which is ‘competency.’ [Doherty v. Kansas City Star Co.](#), 143 Kan. 802, 57 P.2d 43, 45.

While the cases on this subject are numerous, the word ‘authorize’ is generally given a mandatory construction when the statute gives direction to public officers. [Sutherland](#), Statutory Construction, Section 57.14. This is said to arise generally from the rule of construction that the Legislature does not intend their act to produce no result. The United States Supreme Court has stated that acts are mandatory, regardless of whether they are phrased in permissive terms where power is given to public officers to effect a result. [Mason v. Fearson](#), 52 U.S. 248. The South Carolina Supreme Court’s decision in [Moore v. Waters](#), 148 S.C. 326, 146 S.E. 92, does not consider the word ‘authorize’ directly but illustrates the rule that a statute should not be construed so that the Legislature would have produced an ‘idol’ or ‘absurd’ action. In our opinion, it may be fairly said that the failure by the Board to transfer the positions and funds upon request of the Joint Appropriation Review Committee would render the legislative action ineffective, when such intent is not to be presumed.

A characteristic statement of this rule is found at 7A, Words and Phrases, 6110. E.g.

A statute which 'authorizes' a public officer to do a certain thing imposes upon him a positive and absolute duty to do such act, which may be enforced by those for whose benefit it is to be done, in the absence of words giving him a discretion. Chase v. United States, C.C.A. Neb., 261 F. 833, 837.

*2 Sutherland also points out that when the Legislature acts with reference to a matter that is distinctly within its powers, in this case the making of appropriations, that there is further reason for a construction favoring a mandatory result.

There are, likewise, many cases which hold that in the particular statutes concerned the word 'authorized' is considered permissive, but they do not reflect the majority view. Therefore, it is our opinion that the provision in question should be considered mandatory rather than discretionary.

Sincerely,

Frank K. Sloan
Deputy Attorney General

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