

1979 WL 42858 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 12, 1979

\*1 The Honorable Tom Elliott  
Treasurer of Richland County  
Post Office Box 12407  
Columbia, South Carolina 29211

Dear Mr. Elliott:

You have inquired as to whether a county or municipal treasurer, or any other officer empowered to issue checks against public funds, may issue a check for which funds are not actually on deposit at the time the check is issued.

[Section 11-9-210 of the Code of Laws of South Carolina](#), 1976, provides:

It shall be unlawful for any State officer to issue any certificate of indebtedness. Nor shall it be lawful for any State officer to draw a warrant or check for any public debt except upon money then actually to his credit in that account in the hands of some bank or public officer. (Emphasis Added)

This section clearly provides an answer to your question as to State officers. Furthermore, it is arguable, though not entirely clear, that the term 'State officers' in this code provision is a generic term which encompasses all public officers in the State, including county and municipal officers.

[Section 4-13-100 of the Code](#) prescribes the procedure to be followed by county officials when paying claims against the county. This section provides that:

The county supervisor shall draw orders on the county treasurer, under the seal of the supervisor, countersigned by the secretary or clerk of the governing body of the county for all accounts against the county which the governing body has allowed, but he shall draw no orders until after the monthly report of the treasurer has been received by the governing body, nor unless he has reported that there are funds in the treasury to pay the same. The county supervisor shall inform the county treasurer of the orders drawn, in whose favor, the amount and the order in which they are drawn. (Emphasis Added)

Again, it is clear from this section that funds must be on deposit before a county check is issued for the payment of claims against the county.

There does not appear to be a specific statute governing municipal disbursements although municipal ordinances may address this problem. However, municipal corporations can exercise only those powers which are expressly granted, necessarily implied from express powers, or those which are essential to the accomplishment of the declared objects and purposes of the corporation. [McKenzie v. City of Florence](#), 234 S.C. 428, 108 S.E.2d 825 (1959). In the absence of specific legislative authority for municipal officers to issue checks against accounts which do not contain the necessary funds, it would appear that such an act would be ultra vires. Furthermore, in light of the clear legislative policy expressed by the specific prohibitions concerning State officers and county treasurers, such authority cannot be necessarily implied. It is, therefore, the opinion of this Office that municipalities are subject to the same restraint imposed upon State officers and county treasurers, i.e., that the funds against which a municipal check is issued must actually be on deposit at the time of issuance.

\*2 Finally, it should be pointed out that [§ 34-11-60 of the Code](#) prohibits the issuance of any check where the drawer does not have sufficient funds on deposit to pay the check on presentation. Your request did not provide enough information for a determination of whether this criminal statute might be violated by the procedure you envision. However, it should be noted as possibly being applicable.

I hope that this letter answers your inquiry and if I can be of any further assistance, please do not hesitate to ask.

Very truly yours,

Richard B. Kale, Jr.  
Assistant Attorney General

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