

1976 S.C. Op. Atty. Gen. 172 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4346, 1976 WL 22965

Office of the Attorney General

State of South Carolina

Opinion No. 4346

May 11, 1976

*1 Senator Rembert C. Dennis

State House

Columbia, South Carolina

Dear Senator Dennis:

You have requested an opinion from this Office as to the constitutionality of certain proposed provisions of the 1976–1977 general appropriations bill, to wit:

13 Budget and Control Board

It is the desire of the General Assembly to reinstate the merit salary increases for state employees at the earliest possible time. Therefore, if the Budget and Control Board finds that increased General Fund revenue projections for fiscal year 1976–77 will permit additional expenditures, the Board may reinstate the merit salary increases during the fiscal year 1976–77 provided that the total amount authorized for such increases shall not exceed \$9,500,000.00.

and

31 Department of Education

If the Budget and Control Bd. [sic] finds that sufficient funds are available on Jan. 1, 1977, the amount appropriated in this Section shall be increased from \$35.00 up to \$42.50. Provided the Budget and Control Board shall report to the General Assembly by Feb. 1, 1977 the disposition of this matter.

In my opinion, these provisions do not constitute an unlawful delegation of legislative authority in violation of Article I, Section 8 of the South Carolina Constitution of 1895, as amended. The proposed provisions are in the nature of contingent legislation, which type of legislation has been repeatedly upheld by the State Supreme Court. *See, e.g., Moffett v. Traxler*, 247 S.C. 298 (1966); *Beaufort County v. Jasper County*, 220 S.C. 469 (1951); *State ex rel. Richards v. Moorner*, 152 S.C. 455 (1929). The fact that they relate to the appropriation of funds, which is an exclusively legislative power, does not change my conclusion since the funds are in fact appropriated, subject only to the disbursement decision of the Budget and Control Board. In *State ex rel. Coleman v. Lewis*, 181 S.C. 10 (1936), the State Supreme Court found that no unconstitutional delegation of legislative authority resulted from the provisions of an act conferring solely upon the State Highway Commission the determination of the sufficiency of revenues before the issuance of highway bonds. *Cf., State Highway Board v. Gates*, 1 A.2d 825 (1938) (where an act authorizing an emergency board to appropriate moneys for any state department as the board deemed necessary for the state's welfare did not constitute an unconstitutional delegation of the legislative power of appropriation).

Very truly yours,

Daniel R. McLeod
Attorney General

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