



ALAN WILSON
ATTORNEY GENERAL

March 28, 2022

Shelly Kelly, Esq.
General Counsel
Office of the State Treasurer
Wade Hampton Building
1200 Senate Street
Columbia, South Carolina 29201

Dear Ms. Kelly:

We received your request for an opinion on behalf of the South Carolina Treasurer's Office (the "STO") regarding the "implementation of certain provisions of S.C. Code Ann. § 8-15-65(B) (and the related budget provisos that preceded the enactment of the statute in 1996) as it pertains to reductions in the distribution of State Aid to Subdivisions to a county as a result of any reduction in the compensation or operating budgets by a county toward the county officers receiving the state salary supplement." Your letter includes eight specific questions, which we will address below.

Law/Analysis

Section 8-15-65 of the South Carolina Code (2019) pertains to annual salary supplements provided by the General Assembly to specific county officers. Subsection (A) of this statute lists the county officers eligible for state salary supplements and includes clerks of court, probate judges, sheriffs, registers of deeds, auditors, and treasurers. S.C. Code Ann. § 8-15-65(A). Subsection (B) of this statute provides:

(B) The amounts appropriated for salary supplements pursuant to subsection (A) must include both salary and related employer contributions and are in addition to amounts provided as compensation for these officials by counties. To the extent that compensation for these officers is reduced by a county or there is any other reduction of expenditures in the operations of their offices, a corresponding reduction must be made in the distribution otherwise due the county pursuant to Chapter 27 of Title 6, the State Aid to Subdivisions Act.

S.C. Code Ann. § 8-15-65(B) (emphasis added). In interpreting this statute in regard to your inquiries, we must keep in mind the rules of statutory construction, the primary of which is "to ascertain the intent of the legislature." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "The best evidence of intent is in the statute itself: 'What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will.'" Media Gen. Commc'ns,

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Inc. v. S.C. Dep't of Revenue, 388 S.C. 138, 148, 694 S.E.2d 525, 530 (2010) (quoting Norman J. Singer, Sutherland Statutory Construction § 46.03, at 94 (5th ed.1992)).

From the text of the statute, we gather the General Assembly intended for money appropriated for county officer salary supplements to be used as supplement to, not a replacement for, the county funds used for these positions. As you mentioned in your letter, the General Assembly regularly includes provisos in the state budget stating “[i]t is the intent of the General Assembly that the amount appropriated by the county as salaries for these positions shall not be reduced as a result of the appropriation and that such appropriation shall not disqualify each county auditor and each county treasurer for salary increases that they might otherwise receive from county funds in the future.” (citing Provisos 86.4 & 113.3). These provisos further support our belief that the General Assembly intended for these salary supplements to be used only as supplements and not replacements for county funding. With this understanding of the General Assembly’s intent in mind, we turn to your specific questions.

- 1. What are the temporal limitations on the total number of years for which the STO (or the State) can withhold state aid to subdivisions funds to remedy an offset subsidy taken by a county which triggers the mandatory withholding of state aid to subdivisions per the State and/or the Provisos? In other words, how far back in time can the STO or the State go to conduct a corrective action to withhold from state aid to subdivisions to counties under the State and/or the Provisos?**

Section 8-15-65(B) simply states “a corresponding reduction must be made” if compensation to the affected officers is reduced. This provision does not explain in what time frame the salary reduction must be determined or how many years the STO has made the corresponding reduction in State Aid to Subdivisions (“State Aid”) once the reduction is discovered. Because the statute itself does not address this, we consider the intent of the General Assembly. As we concluded above, the General Assembly’s inclusions of this penalty was likely to discourage counties from decreasing the compensation of county officers and replacing it with state-funded salary supplements. For this penalty to be effective, we presume the General Assembly intended for the reduction to be made from the upcoming distribution of State Aid after discovery of the salary or expenditure reduction. This interpretation would make the reduction in State Aid contemporaneous with the discovery of the reduction in compensation.

In our research, we looked to other South Carolina Code provisions allowing the STO to deduct portions of a jurisdiction’s State Aid to Subdivisions. Section 14-1-210 of the South Carolina Code (2017 & Supp. 2021) also allows the STO to reduce a jurisdiction’s State Aid for failing to pay court fees collected and not remitted to the state by county and municipal treasurers and clerks of court. This provision charges the State Auditor with performing periodic examinations of county and municipal records to determine if a jurisdiction under remitted, incorrectly reported, incorrectly retained, or incorrectly allocated the State or victim services portion of the funds it collected. Section.14-1-210(A) instructs, “if full payment has not been made by the county or municipality within ninety days of the audit notification, the State Treasurer shall adjust the jurisdiction’s State

Aid to Subdivisions Act funding in an amount equal to the amount determined by the State Auditor to be the state's portion; or equal to the amount incorrectly reported, retained, or allocated pursuant to Sections 14-1-206, 14-1-207, 14-1-208, and 14-1-211." This provision, like section 8-15-65, does not specify a timeframe in which the STO must make the reduction to State Aid. However, this reduction is triggered when the jurisdiction does not remit payment within ninety days of the audit notification. Additionally, section 14-1-210(C) requires each municipality to submit a copy of its annual audit report to the STO and the State Auditor within thirty days of the report being made public and if the municipality fails to do so, the STO has authority to withhold State Aid until the annual report is properly filed. Given the audit and reporting requirements provided by the General Assembly, the STO has the opportunity to timely discover errors which may result in a withholding or decrease of State Aid.

Section 8-15-65 does not contain reporting or other requirements. Therefore, it is difficult for the STO to discover a reduction in a county officer's salary or expenditures made to their offices. In turn, it is difficult for the STO to comply the General Assembly's mandate to withhold State Aid. As such, we believe this issue needs to be addressed by the General Assembly through a clarifying amendment to section 8-15-65.

- 2. Is there a statute of limitations or repose that should be viewed as applicable to the ability of the STO to make a "corresponding reduction" to a county's state aid to subdivisions per the requirement of the Statute? The STO does not believe that a statute of repose or limitations applies to corrective action taken under the Statute, because the statutory remedy does not require the filing or pursuit of any legal action to which such limitations would apply.**

As we determined above in our response to question one, the General Assembly did not specify a timeframe upon which the STO must act. Nevertheless, we believe the General Assembly intended for the STO to timely act upon the discovery that a county reduced the salary of an officer specified in section 8-15-65.

- 3. If a county official has a reduction in salary or operating expenses in one fiscal year, does the failure to restore the salary or operating expenses in the next fiscal year continue the requirement for a corresponding reduction in subsequent years?**

As we mentioned above, we believe the intent of the General Assembly in regard to section 8-15-65 was to provide an additional, state-funded supplement to certain county officers. With that intent in mind, we believe requiring the STO to reduce State Aid to counties that decrease county officer salaries was meant to discourage counties from reducing county-funded salaries in light of state-funded supplements. As such, we believe the General Assembly did not envision a continual tracking of county officer salaries, but only envisioned a reduction in State Aid in light of a reduction in an officer's salary in a particular year. However, we again suggest that the General Assembly clarify this issue with an amendment to the statute.

4. If the reduction is carried forward to future fiscal years, what is the impact if the county later increases the base salary?

As we explained in our answer to your third question, we do not believe the Legislature intended for a continual reduction in State Aid due to a county's reduction in one year as such is not provided for in the statute. Therefore, officer salaries should be considered on a year to year basis and if a reduction occurs, a corresponding reduction in State Aid is required.

5. What rights do the county officials who have incurred an offset subsidy have with regard to the corrective action under the Statute? Would they have legal standing to seek a declaratory judgment action or writ of mandamus upon the State Treasurer to compel the withholding of state aid to subdivisions, or compel the county to compensate them in a manner that does not realize an offset to the county? Does Section 15-3-560(3) operate as a statute of limitations for any such actions?

Section 8-15-65 entitles certain county officers to payment of salary supplements. While this provision imposes a duty on the STO to make a corresponding reduction State Aid if a county reduces compensation to a county officer, we do not believe it entitles such county officers to corrective action. The remedy provided by the General Assembly according to the plain terms of the statute is a corresponding reduction in that county's State Aid. "[I]t is the general rule that where a statute creates a right and also provides an adequate remedy which is not by its terms cumulative, the remedy thus prescribed is exclusive." Op. Att'y Gen., 1972 WL 20538 (S.C.A.G. Nov. 16, 1972). Therefore, we do not believe section 8-15-65 gives a remedy to county officers when a county reduces their compensation.

You also inquired as to whether county officers have legal standing to seek a declaratory judgment action if their salary is reduced. As our Court of Appeals noted recently, "[d]eclaratory judgment claims are creatures of statute, and an individual's right to pursue declaratory judgment derives from that statutory authority." Carpenter v. S.C. Dep't of Corr., 431 S.C. 512, 523, 848 S.E.2d 346, 352 (Ct. App. 2020). Declaratory judgment actions are governed by the Uniform Declaratory Judgements Act found in chapter 53 of title 15 of the South Carolina Code. S.C. Code Ann. §§ 15-53-10 et seq. (2005). Section 15-53-20 of the South Carolina Code (2005) states: "Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed." However, a declaratory judgment "must be brought by a person having a substantial interest in the subject matter of the litigation and to establish such an interest, he must show that he will be directly affected by the enforcement of the statute questioned." Lee v. Clark, 224 S.C. 138, 143, 77 S.E.2d 485, 487 (1953).

A county officer would certainly have an interest in the enforcement of this provision as it discourages counties from reducing county officer salaries. However, the officer's salary would remain the same regardless of whether the STO reduces State Aid to the county. Therefore, it may be difficult for an officer to prove he or she is directly affected by enforcement of section 8-15-65. Nonetheless, demonstration of sufficient interest and the impact enforcement of the State Aid

reduction both involve consideration facts. As we stated in numerous prior opinions, this Office does not have the ability to make factual determinations. Op. Att’y Gen., 1995 WL 803662 (S.C.A.G. May 19, 1995) (“[T]his Office has no jurisdiction or authority to undertake the determination of facts.”). Accordingly, we do not believe we can conclusively determine whether county officers may seek declaratory judgment as to whether the STO must withhold State Aid under section 5-15-65(B) under a particular set of circumstances.

In regard to a writ of mandamus, our Supreme Court explained:

“To obtain a writ of mandamus requiring the performance of an act, the petitioner must show: (1) a duty of respondent to perform the act; (2) the ministerial nature of the act; (3) the petitioner’s specific legal right for which discharge of the duty is necessary; and (4) a lack of any other legal remedy.” Wilson v. Preston, 378 S.C. 348, 354, 662 S.E.2d 580, 582-83 (2008) (citing Riverwoods, LLC v. County of Charleston, 349 S.C. 378, 563 S.E.2d 651 (2002)). A writ of mandamus “is designed to promote justice, subject to certain well-defined qualifications. Its principal function is to command and execute, and not to inquire and adjudicate.” Charleston Cty. Sch. Dist. v. Charleston Cty. Election Comm’n, 336 S.C. 174, 182, 519 S.E.2d 567, 571-72 (1999) (quoting Willimon v. City of Greenville, 243 S.C. 82, 86-87, 132 S.E.2d 169, 170-71 (1963)).

“The duties of public officials are generally classified as ministerial and discretionary (or quasi-judicial).” Wilson v. Preston, 378 S.C. 348, 354, 662 S.E.2d 580, 583 (2008) (citing Redmond v. Lexington Cty. Sch. Dist. No. Four, 314 S.C. 431, 445 S.E.2d 441 (1994)). “The character of an official’s public duties is determined by the nature of the act performed.” Id. (citing Long v. Seabrook, 260 S.C. 562, 197 S.E.2d 659 (1973)). “The duty is ministerial when it is absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts.” Id. (citation omitted). “It is ministerial if it is defined by law with such precision as to leave nothing to the exercise of discretion.” Id. “In contrast, a quasi-judicial duty requires the exercise of reason in the adaptation of means to an end, and discretion in determining how or whether the act shall be done or the course pursued.” Id.

Richland Cty. v. S.C. Dep’t of Revenue, 422 S.C. 292, 307-08, 811 S.E.2d 758, 766 (2018).

Section 8-15-65(B) requires a corresponding reduction in State Aid to a county should it reduce compensation to the named county officials or if there is “any other reduction of expenditures in the operations of their offices.” Because the STO is charged with making payments under the State Aid to Subdivisions Act, we believe the duty to act lies with the STO. Additionally, the use of mandatory language leads us to believe that this reduction constitutes a ministerial function over which the STO does not have discretion. In our research, we did not discover an alternate legal

remedy afforded to county officers if a county reduces their compensation or expenditures for the operation of their offices. However, we question the legal rights afforded to the county officers if the STO fails to reduce the State Aid under such circumstances. Section 8-15-65 does not expressly give any legal rights to county officers whose compensation or expenses are reduced by the county. Therefore, we are skeptical as to a county officer's ability to seek a writ of mandamus because they lack a specific legal right for which discharge of the duty is necessary.

In addition, you inquire about the application of section 15-3-560(3) of the South Carolina Code (2005) to such actions. Section 15-3-560(3) provides a one year statute of limitations on

[a]n action against any county of this State having a population as shown by the United States official census of 1930 or any subsequent United States official census in excess of eighty-five thousand brought by any former, present or future officer, including county auditors and county treasurers, employee or agent thereof on account of any claim for salary, wages, fees, costs or other emolument or claim alleged to be due him on account of services rendered or performed, or brought upon any such claim by an assignee or personal representative thereof.

As previously explained, section 8-15-65 establishes state-funded salary supplements. While section 8-15-65 seeks to discourage counties from reducing the salaries of county officers because of such supplements, we do not believe this provision creates a legal right to lost compensation. Therefore, we do not believe section 15-3-560 applies.

- 6. Is there a remedy available that would allow the STO to provide additional compensation to the county officials (who were subject to an offset subsidy) out of the withheld state aid to subdivisions? The STO takes the position that because for over twenty-five years the Statute has been silent as to this specific issue, no such authority exists. We are aware of Section 15-3-560(3) which places a one-year statute of limitations upon actions brought personally by a county official against a county with a population in excess of eighty-five thousand "for salary, wages, fees, costs or other emolument or claim alleged to be due him on account of services rendered or performed . . ." However, we do not think this statute applies in this situation in the case of a state auditor or treasurer, whose salary supplement are paid directly by the STO, and thus are not "due" from the county, and furthermore, the county does not disburse the state aid to subdivisions which would be the source of a corrective payment from the STO if allowed by law. Furthermore, Section 15-3-560(3) would not likely be construed by the Court to operation as a limitation upon the action of the State Treasurer seeking to effectuate the intent of the Legislature in the Statute.**

Like we mention above, this Office believes that when a statute provides a remedy that is not cumulative, such a remedy is exclusive. *Op. Att'y Gen.*, 1972 WL 20538 (S.C.A.G. Nov. 16, 1972). The only remedy provided under section 5-15-65 if a county decreases the compensation

or expenses of a county official, is for the STO to decrease such county's State Aid. Section 8-15-65 does not provide for the payment of any amounts withheld from State Aid under these circumstances to the affected county officer. Therefore, we agree with your assessment that if General Assembly intended to provide county officers with a remedy for such action by a county, it would have provided as such in section 8-15-65.

- 7. If the State Treasurer is authorized or required to reduce county funds per the Statute (and/or the Provisos) due to the county actions that originate in the 1990s, (or an otherwise long term of years) does the State Treasurer have the legal authority to negotiate and enter into a compromise settlement with a county, whereby the county could be required to pay a certain amount of the offset subsidy funding to the affected county official per the discretion of the State Treasurer, and in return, the county would not be subject to the full measure of deduction to state aid to subdivisions?**

Section 8-15-65(B) states "a corresponding reduction must be made" if a county reduces the compensation or expenditures for one of the listed county officials. (emphasis added). Under the rules of statutory interpretation, "use of words such as 'shall' or 'must' indicates the legislature's intent to enact a mandatory requirement" Collins v. Doe, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002). Therefore, the reduction is mandatory. Moreover, as we explained in response to your fifth question, we believe the STO's function is ministerial. Therefore, the STO does not have the ability chose whether or not to make a corresponding reduction to a county's State Aid. As such, we do not believe the STO has authority to negotiate or enter into a compromise settlement with a county that reduces compensation or expenses of county officers eligible for salary supplements under section 8-15-65.

Nonetheless, we understand your concern regarding reductions in county officer salaries and expenses occurring a number of years ago that have just recently been discovered and the STO's responsibilities in regard to them. As we discussed in response to your first question, the General Assembly has imposed a mandatory duty on the STO to reduce State Aid in response to a reduction in county officer salaries and/or expenses, but there is no mechanism in place to notify the STO of these reductions. While we believe the General Assembly intended for reductions in State Aid to be contemporaneous with a reduction in county officer's salary or expenses, doing so is problematic when this information of not readily available to the STO. Therefore, as we discusses in the first question, we believe this issue needs to be addressed by the General Assembly.

- 8. The Provisos indicate an intention that a county official receiving the state supplement should not be disqualified from increases in compensation due to the receipt of the state salary supplement, but only explicitly directs a deduction from state aid in the event of a reduction in salary or operating budgets. If salary increases are provided to certain county officials in a disproportionate manner that is contrary to the aforementioned intent of the Provisos, may the Treasurer treat this lack of parity in salary increases as triggering the requirement (by statute and proviso) to implement deductions to state aid to subdivisions? For example, if the county clerk of court receives a ten percent increase**

in salary while the county treasurer receives a two percent increase, can the Treasurer view the eight percent disparity as in violation of the Provisos and/or Statute and take action to reduce state aid to subdivisions in a commensurate manner?

We do not believe section 8-15-65 addresses these circumstances. Section 8-15-65 only states a corresponding reduction to State Aid must be made “to the extent that compensation of these officers is reduced by a county or there is any other reduction of expenditures in the operations of their offices” Therefore, section 8-15-65 does not address any issues of salary parity among the officers listed. Based on the plain and ordinary reading of the statute, we do not believe the STO is responsible for reducing State Aid in the event that some officers receive different pay increases than others.

Conclusion

Section 8-15-65(B) requires a corresponding reduction in State Aid to a county when that county reduces an officer’s salary or the expenditures associated with their office. Based on our understanding of the General Assembly’s intent, we believe this provision was included as a means to discouraging counties from reducing county funding of an officer’s salary as a result of state-funded salary supplements. In other words, the General Assembly wants to insure state-funded supplements are in fact supplements and in addition to the funding put in place by the county.

With this understanding in mind, while the statute does not express when these corresponding reductions must be made or set a time limit for the reduction, we believe the General Assembly envisioned they would occur contemporaneously with a reduction in the officer’s salary. We also believe it is triggered on a year to year basis only by the decrease in a particular officer’s salary or expenditures. However, as we discovered, the STO does not regularly receive data and information from counties on their officers’ salaries making it very difficult to discover reduction in salaries and expenses in a timely manner. Accordingly, we believe the issue should be addressed by the General Assembly.

In regard to a county officer’s right to compensation under section 8-15-65, while this statute pertains to supplements given to county officers, it does not give them the right to recover any compensation from the county or the STO. The sole remedy provided by the General Assembly under section 8-15-65 is a corresponding reduction in State Aid to the county. Because no specific rights are provided to county officers under section 8-15-65, it may be difficult if not impossible for them to have standing to bring a declaratory judgment or writ of mandamus action to require the STO to reduce a county’s State Aid. Because no right to compensation is provided to these county officers under section 8-15-65, we also do not believe the STO has authority to compensate county officers for reductions in salary. Furthermore, we do not believe the STO has authority to negotiate with a county regarding the reduction of State Aid because of the mandatory language contained in section 8-15-65 requiring a corresponding reduction in State Aid if a county officer’s salary or expenses are reduced.

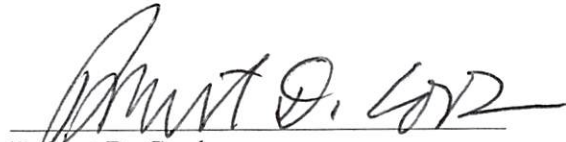
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Sincerely,



Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General