1984 WL 249707 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
January 24, **1984**

***1** The Honorable Solomon Blatt
Speaker Emeritus
S. C. House of Representatives
Post Office Box 365
Barnwell, South Carolina 29812

Dear Mr. Speaker:
By your letter of July 20, 1983, you have asked for an opinion as to the powers of the Budget and Control Board in the area of State finance. Specifically, you note that
The Board now constituted appropriates money, transfers funds from one account to another, cuts down appropriations made by the General Assembly, makes appropriations and, as a matter of fact does about everything the Legislature can do together with those things the Executive branch of government can do.

Based upon these conclusions, you question whether the Board 'is . . . created as required by the Constitution of South Carolina.'

The following is a brief listing of powers conferred by statute on the Board with respect to general statewide financial matters:
1. Act No. 151 of 1983 (General Appropriations Act):
a. § 140—Board is authorized 'to make such reductions of appropriations as may be necessary,' subject to certain conditions; Board is also authorized 'to borrow such amounts of money as may be necessary to pay appropriations made by the General Assembly . . ..'

b. § 141—Board authorized to make transfers of appropriations within departments.

c. § 14—Upon unanimous approval, Board may expend Civil Contingent Funds to meet emergency and contingent expenses; Board shall make allotments for employee compensation based on actual need rather than amounts appropriated because vacancies make it necessary to allot the full amount appropriated.

2. South Carolina Code Sections 11-9-240 through 11-9-270; permits Board to borrow funds from agencies with surpluses; numerous conditions.

3. § 11-9-230: only Board may borrow money for State purposes:

4. §§ 11-9-280 through 11-9-300: Board may borrow to maintain balances in general deposit account, general fund or to pay operating expenses.

5. §§ 11-9-310 through 11-9-330: Board may issue small denomination notes.

6. §§ 11-9-610 through 11-9-680: Board to manage Sinking Fund, including power to invest.

7. § 11-9-100: Board authorized to withhold a portion of appropriations from agencies failing to correct material weaknesses in internal audit system.

The sections above comprise the major powers of the Board as related to State appropriations. The Board also has a number of finance-related powers regarding bonds and permanent improvements. These are not cited above because they do not directly concern appropriated funds, but examples of such provisions can be found in § 138 and 149 of the 1983-84 General Appropriations Act and in § 4 and § 5 of Act No. 179 of 1981. Further functions of the Board can be found in the enclosed complete listing of the Board's functions as of 1977, copied from the complaint filed in State ex rel. McLeod v. Edwards, 269 S.C. 75, 236 S.E.2d 406 (1977).

***2** As we read your letter, the principal issue suggested is whether the above statutes which delegate authority to the Budget and Control Board in the area of State finance are violative of Art. I, § 8 of the South Carolina Constitution which provides:
In the government of this State, the legislative, executive and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.

Particularly in question is § 140 of Act No. 151 of 1983 (General Appropriations Act) which authorizes the Board 'to make such reductions of appropriations as may be necessary' where it appears that revenues will not meet proposed expenditures. Also, subject to question is § 141 of the same Act, which empowers the Board to make transfers of appropriations within departments of government.

In 1977, the Supreme Court of South Carolina decided the case of State ex rel. McLeod v. Edwards, supra. There the Court concluded that the presence of two legislative members on the Board, which has five members in all, did not itself constitute a violation of the Separation of Powers Clause in permitting legislators to exercise executive functions. The Court noted that 'established precedent requires rejection of the contention that inclusion of the two legislators on the membership of The Board violates the separation of powers provisions . . .'; the Court cited previous cases such as Harper v. Schooler, 258 S.C. 486, 189 S.E.2d 884 (1972), Mims v. McNair, 252 S.C. 64, 165 S.E.2d 355 (1969) and Elliott v. McNair, 250 S.C. 75, 156 S.E.2d 421 (1967) as examples where the earlier forms of attack on the composition of the Board had been rejected. Concluding that the General Assembly was familiar with these previous holdings when it readopted the Separation of Powers provision of the Constitution in 1970, the Court observed that
If it had been the intent of the General Assembly to exclude the foregoing legislative members, certainly Section 8 (of Art. I) would have been rewritten in such a fashion as to override the prior decisions of this Court construing the language as permitting such membership.

236 S.E.2d supra at 408. The Court in Edwards was thus satisfied that the above analysis was dispositive of the constitutional attack upon the Board's composition. Supra. Nevertheless, the Court proceeded to reexamine the issue, again finding that the Separation of Power provision of the Constitution was not violated.
Important in this case is the fact that the General Assembly has been careful to put the legislative members in a minority position on the Board. The statutory composition of the Board does not represent an attempt to usurp the functions of the executive department, but apparently represents a cooperative effort by making the knowledge and expertise of the chairmen of the two finance committees in the fiscal affairs of the State and the legislative process in general. We view the ex officio membership of the legislators on The Board as cooperation with the executive in matters which are related to their functions as legislators and not usurpation of the functions of the executive department.

***3** Supra at 409. Finally, said the Court:

The composition of the State Budget and Control Board has been sanctioned as lawful for a long number of years by legislative enactments, judicial construction, and the people. We find no sound basis to justify upsetting this long sanction and acceptance of the Board as a vital part of the machinery of the government of this State.

A close reading of Edwards makes it clear however that the Court did not specifically address the question whether any particular Board function, as opposed to the composition of the Board, violated Art. I, § 8. Although plaintiff's complaint contained a full enumeration of the various powers and duties of the Board (see attached), the Court was careful in its opinion to note that 'we are concerned here only with the constitutionality of its composition and not with the wisdom of the enactments increasing its functions.' Supra.

Thus, the question which you raise, whether the General Assembly may, consistent with Art. I, § 8, lawfully delegate authority to the Budget and Control Board, to reduce or transfer appropriations, is one as yet not squarely addressed by the Court. However, in attempting to answer it, the fact that on **four** separate occasions, constitutional attacks upon the Budget and Control Board have failed, cannot be ignored. See above. Nor can the fact, expressly noted in Edwards, that the Board has received the long and continuous sanction of the Court, the Legislature and the people be discarded. As long ago as 1940, the Board's predecessor, the Budget Commission, possessed the authority to reduce certain appropriations to avoid a deficit and that procedure was implicitly approved by the Attorney General. See 1940 Op. Atty. Gen. p. 177; in other words, such statutory authority has been in existence for decades. While a longstanding, widespread practice is not immune from constitutional scrutiny, neither is it to be brushed aside. Payton v. New York, 445 U.S. 573, 63 L.Ed.2d 639 (1980); see also, Scroggie v. Scarborough, 162 S.C. 218, 233-234, 160 S.E. 596 (1931).

Furthermore, the questions you raise must be addressed with the following well-settled principles in mind:
The supreme legislative power of the State is vested in the General Assembly; the provisions of our State Constitution are not a grant but a limitation of legislative power, so that the General Assembly may enact any law not expressly, or by clear implication, prohibited by the State or Federal Constitution; a statute will, if possible, be construed so as to render it valid; every presumption will be made in favor of the constitutionality of a legislative enactment; and a statute will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution.

Moseley v. Welch, 209 S.C. 19, 39 S.E.2d 133, 137 (1946). And of course, this office possesses no authority to declare a statute of the General Assembly unconstitutional. We can only advise as to how the courts would likely treat the constitutional question. For all the reasons cited above, particularly past approval of the financial role of the Board, the because the various financial functions of the Board are probably not an unlawful delegation of legislative power, we believe a court would likely find the Board's financial authority not violative of the Separation of Powers provision of the State Constitution (Art. I, § 8).

***4** It is well-settled that, pursuant to Art. I, § 8, the Legislature may not delegate its power to make laws. Bauer v. S.C. State Housing Authority, 271 S.C. 219, 246 S.E.2d 869 (1978). However, it is equally exiomatic that
. . . in enacting a law complete in itself [the Legislature] . . . may authorize an administrative agency or board 'to fill up the details' by prescribing rules and regulations for the complete operation and enforcement of the law within its expressed general purpose . . .. 'However, it is necessary that the statute declare a legislative policy, establish primary standards for carrying out, or lay down an intelligible principle to which the administrative officer or body must conform, with a proper regard for the protection of the public interests and with such degree of certainty as the nature of the case permits, and enjoin a procedure under which, by appeal or otherwise, both public interests and private rights shall have due consideration' . . .

271 S.C., supra at 232, quoting S.C. Highway Dept. v. Harbin, 266 S.C. 585, 594, 86 S.E.2d 466 (1955). See also, Davis v. Query, 209 S.C. 41, 39 S.E.2d 117 (1946); State v. Taylor, 223 S.C. 526, 77 S.E.2d 195 (1953); Cole v. Manning, 240 S.C. 260, 125 S.E.2d 621 (1962). The Supreme Court of South Carolina has further noted that

The degree to which a legislative body must specify its policies and standards in order that the administrative authority granted may not be an unconstitutional delegation of its own legislative power is not capable of precise definition. There are many instances where it is impossible or impracticable to lay down criteria or standards without destroying the flexibility necessary to enable the administrative offices to carry out the legislative will . . ..

S.C. State Hwy. Dept. v. Harbin, 226 S.C., supra at 595. Especially is great leeway essential where discretion '. . . is necessary to protect the public . . . health, safety and general welfare.' Cole v. Manning, 240 S.C., supra at 265. Accordingly, the Court has fashioned the following guideline: a statute '. . . which in effect reposes an absolute, unregulated and undefined discretion in an administrative body bestows arbitrary powers and is an unlawful delegation of legislative powers.' Bauer v. S.C. State Housing Authority, 271 S.C., supra at 233 quoting, S.C. State Hwy. Dept. v. Harbin, 86 S.E.2d at 471.

Based upon the foregoing principles, it is evident that § 140 of Act No. 151 of 1983, is not an unlawful delegation of legislative power. The relevant portions of that section read as follows:
Any appropriations made herein or by special act now or hereafter, are hereby declared to be maximum, conditional and proportionate, the purpose being to make them payable in full in the amount named herein, if necessary, but only in the event the aggregate revenues available during the period for which the appropriation is made are sufficient to pay them in full. The State Budget and Control Board shall have full power and authority to survey the progress of the collection of revenue and the expenditure of funds by all departments and institutions, and is hereby authorized and directed to make such reductions of appropriations as may be necessary; Provided, That, no institution or activity for which the General Assembly has herein provided shall be discontinued. Provided, Further, that any reduction of appropriations by the said Board, under authority of this Act, shall be applied as uniformly as may be practicable except that no reduction shall be applied to any part of such appropriations which may be encumbered by a written contract with an agency not connected with the State Government; and . . . Provided, Further, That no such reduction shall be ordered by the State Budget and Control Board while the General Assembly is in session without first reporting such necessity to the General Assembly.

***5** This office has previously concluded that, pursuant to the foregoing provision, 'the Board's power to reduce appropriations is limited to . . . situations in which a deficit exists or is anticipated.' 1976 Op. Atty. Gen., No. 4493, p. 351. This authority is in according with and designed to enforce Art. X, § 7 of the South Carolina Constitution (1895 as amended) which, in effect, prohibits a deficit, see, 1976 Op. Atty. Gen., No. 4254, p. 58, and other provisions of statutory law to the same effect). See, §§ 11-9-810 et seq.; § 11-11-120. Moreover, the Board may not make a reduction which discontinues and institution or activity for which the General Assembly has provided, may not make a reduction while the Legislature is in session without first reporting to the Legislature and is expressly required to make all reductions as 'uniformly as practicable'. Such restrictions placed upon the Board do not, in our opinion, bestow 'an absolute, unregulated and undefined discretion' in the Board. Bauer v. S.C. State Housing Authority supra. As this office concluded in a 1972 opinion, the power granted by the Legislature to the Board, pursuant to § 140, is 'a valid exercise of the Legislature's delegatory authority.' Op. Atty. Gen., (Feb. 10, 1972) [copy attached].

Of course, the power to appropriate money is a function belonging entirely to the General Assembly. State ex rel. McLeod v. McInnis, —— S.C., 295 S.E.2d 633; Art. X, § 8.

That function itself may not be delegated to the courts or executive boards. Gregory v. Rollins, 230 S.C. 269, 275, 95 S.E.2d 487 (1956). However, in exercising its power to appropriate, the General Assembly has 'the right to specify the conditions under which the appropriated monies shall be spent.' 295 S.E.2d, supra at 637. Except as restricted by the Constitution, the Legislature has the exclusive power to direct how, when and for what purpose the public funds shall be applied in carrying out the objects of the State government. State ex rel. Anderson v. Fadely, (Kan.), 308 P.2d 537 (1957). And it may authorize the executive branch by vesting in that branch certain discretion to carry out the legislative mandate. Op. of the Justices, (Mass.), 19 N.E.2d 807, 815 (1939). For, the expenditure of appropriated monies, as opposed to their appropriation, is a function properly within the province of the executive branch. See, State ex rel. McLeod v. McInnis, supra.

Section 140 of Act No. 151 makes it clear that an appropriation is the maximum amount which can be spent and that a full appropriation is expressly conditioned upon the event of 'the aggregate revenues available during the period for which the appropriation is made are sufficient to pay them in full.' And, to carry out this purpose, the Legislature has assigned the Budget and Control Board, the 'executive body dealing primarily with the fiscal affairs of the State government', Edwards, 236 S.E.2d supra at 407, the task to 'survey the progress of the collection of revenue and the expenditure of funds by all departments and institutions'; if a deficit exists or is anticipated, the Board acting within the criteria outlined above, is then required to exercise its discretion to control agency spending and avoid the deficit. Thus, the Legislature has already fulfilled and completed its role in appropriating the funds, upon the condition that revenues will be available to pay them in full; it has then delegated to the Board the function of authorizing the expenditure of only so much of those funds which equal actual revenues. This, we believe, a court would conclude to be a proper function of the executive branch and in our opinion it does not usurp the constitutional role of the Legislature.

***6** Courts in other jurisdictions have continuously recognized that, while the General Assembly may not delegate the power of appropriation, it may give the executive branch the discretion to reduce or transfer appropriations based upon the executive's spending function. 81A C.J.S., States, § 232, p. 808-809. A number of decisions involving statutes similar to § 140 have been upheld. In Etherton v. Wyatt, (Ind.), 293 N.E.2d 43 (1974), a statute authorized the State Budget Agency to 'reduce the amount or amounts allotted or to be allotted so as to prevent a deficit.' 293 N.E.2d supra at 50; the Court concluded that so long as the criteria enumerated were applicable 'and upon some reasonable basis to support its action', the reduction was valid. Supra at 51. In Roselli v. Noel, 414 F.Supp. 417 (D.R.I. 1976), a similar power was given the Governor. The Court noted that
The comprehensiveness of this explicit statutory scheme belies the defendants' assertion that it gives rise to an implicit delegation of virtually unlimited authority to the Governor to withhold appropriations.

414 F.Supp., supra at 424. In Bd. of Ed. v. Gilligan, (Ohio), 301 N.E.2d 911, the Court examined a statute having far less standards than § 140 and upheld it, noting that the statute involved the general health and welfare and needed little, if any standards, to be constitutionally valid. Of course, this same reasoning has been approved in other contexts by our Supreme Court in a number of cases. See, e.g., Darlington v. Stanley, 239 S.C. 139, 122 S.E.2d 207 (1961).

In Board of Ed. of Wyoming Co. v. Bd. of Public Works, (W.Va.), 109 S.E.2d 552 (1959), the Court carefully scrutinized a statute similar to § 140 with respect to whether it constituted an unlawful delegation of the legislative power to appropriate money. We believe a South Carolina court would find the reasoning of that case persuasive here. There, the Court stated:
When given its proper meaning and effect, Section 35 does not attempt to authorize The Board of Public Works to instruct the director of the budget to reduce or alter the amount of the appropriation but to limit expenditures from the appropriations to the revenue available for that purpose. Under Section 35, the appropriation remains unaltered and unalterable by any act of the executive branch which is powerless to effect any change whatsoever in the appropriation, for the power to appropriate public money is a legislative power . . . [citations omitted]. If the revenue is less than the appropriations only the available revenue may be expended and no overdraft or deficit may be created; but if the revenue is sufficient to satisfy the appropriation in its entirety the available revenues may be expended within the limits of the appropriation for the purpose for which such revenue has been appropriated. It is therefore clear that Section 35, Article 5, Chapter 5, Code, 1931, as amended, is not a delegation of legislative power to the executive department . . . and is in all respects a valid legislative enactment.

***7** 109 S.E.2d, supra at 560. We believe a court would follow this reasoning, thus upholding § 140 and would conclude that the provision does not violate Art. I, § 8. This conclusion is again, in accord with the earlier view expressed by this office. See, p. 8 herein.

Furthermore, we are of the opinion that for many of the same reasons, a court would also uphold the constitutional validity of § 141. This provision authorizes the Board, upon unanimous approval, to transfer appropriations within departments, so long as such transfer does not increase the compensation of any State employee as provided in the Appropriations Act. Again, this is a proper function of the executive, commensurate with the legislative desires, State ex rel. Schneider v. Bennett, 547 P.2d 786

(1976), and the Legislature may appropriately authorize it. 81A C.J.S., States, § 232, pp. 808-809. It is well recognized that such authorization does not constitute an unlawful delegation of legislative power, but instead, is 'an executive or administrative power of expenditure.' In re Opinion of the Justices, (Mass.), 19 N.E.2d 807 (1939). While it is true that an appropriation may be expended only for the purpose or object specified, 81A C.J.S., States, § 241, the Legislature may also choose whether

. . . it will prescribe in detail the particular purposes for which money appropriated shall be expended or, on the other hand, will permit executive or administrative offices or boards to exercise judgment and discretion within a wide field in the expenditure of money appropriated for a given object to accomplish the general purposes of the appropriation. The choice of the latter alternative has been made frequently . . . [citations omitted]. Such a choice—at least within reasonable limits—does not amount to an unconstitutional delegation of legislative power.

19 N.E.2d, supra at 815. A number of decisions in other jurisdictions are in accord, generally holding that the power to transfer funds in a manner similar to that authorized by § 141 is valid. See, 81A C.J.S., States, § 241; State ex rel. Murray v. Carter, (Okl.), 30 P.2d 700 (1934); Wall v. Close, (La.), 14 So.2d 19 (1943); Bussie v. McKeithen, (La.), 259 So.2d 345 (1971); State ex rel. Meshel v. Keip, (Ohio), 423 N.E.2d 60 (1981); Roselli v. Noel, supra. Therefore, we believe that at least so long as the authority delegated by § 141 goes no further than allowing transfers of funds within agencies or departments, a court would probably uphold its validity. See also, Op. Atty. Gen., (Dec. 20, 1979).

Your question also addresses the authority of the Budget and Control Board to 'make appropriations.' We know of no statutory authorization for the Board to make appropriations, which is, as noted, a power reserved exclusively to the Legislature. In this regard, I am enclosing a copy of an opinion recently issued by this office which concludes that, absent an appropriation by the General Assembly, the Board possesses no power to authorize the Department of Mental Health to use or divert patient revenues for the payment of a consultant contract. Op. Atty. Gen., September 7, 1983; Art. X, § 8, South Carolina Constitution; see also, 1941 Op. Atty. Gen., p. 179 [the Budget Commission has no authority to transfer and appropriate surplus funds, but its authority to make transfers is limited to amounts in the annual Appropriations Act.].

***8** Finally, you have asked whether the Board may fund 'a position in the technical education system for which no money was appropriated and the TEC Board did not request that this position be created nor did they have in their budget request funds for this position for another year.' We understand from the materials submitted by you that the Board took this action pursuant to § 14 of the 1983 Appropriations Act (Act No. 151 of 1983), which authorizes the Board to expend funds for emergencies or contingencies. We further understand that approval of the position was made conditional upon favorable action by the state TEC board and a subcommittee of the House Ways and Means Committee; moreover, approval was for the remainder of the 1983-84 fiscal year.

Section 14 of Act No. 151 provides in pertinent part:

Provided, Further, That the Civil Contingent Fund, appropriated in Subsection 14A of this Section shall be expended only upon unanimous approval of the Budget and Control Board, and upon warrant requisitions signed as directed by the State Budget and Control Board, to meet emergency and contingent expenses of the State Government. Provided, Further, That none of the Civil Contingent Fund shall be used to increase the salary of any State employee.

Provided, Further, That the State Budget and Control Board shall file with the South Carolina General Assembly a detailed report of all expenditures from the Civil Contingent Fund. (emphasis added)

Similar legislative enactments have been addressed by courts in several other jurisdictions. See, Vandegrift v. Riley, 220 Cal. 340, 30 P.2d 516 (1934); Raymond v. Christian, 24 Cal.App.2d 92, 74 P.2d 536 (1938); Director of Bureau of Legislative Research v. Mackrell, (Ark.), 204 S.W.2d 893 (1947); Board of Ed. of Elizabeth v. Elizabeth, 13 N.J. 589, 100 A.2d 745 (1953); City of Passaic v. Local Finance Board, 88 N.J. 293, 441 A.2d 736 (1982). Pursuant to such a provision, the funds set aside for us in an emergency or contingency are clearly appropriated funds. Vandegrift v. Riley, supra. And the power to apportion the funds permits 'a flexibility in the handling of the State's funds not otherwise attainable . . .'. Vandegrift, 30 P.2d supra at 521.

Expenditure of the emergency or contingency fund must, by the terms of the statute, be for an emergency or contingent expense. Section 14 itself contains no definitions of the term 'emergency' or 'contingent' expense; however, the South Carolina Supreme Court has defined an 'emergency' as

an unforeseen occurrence or combination of circumstances which calls for immediate action or remedy; [a] pressing necessity; exigency.

Hice v. Hobson Lumber Co., 180 S.C. 259, 269, 185 S.E. 742 (1935).

As used in a provision similar to § 14 'emergency' is synonymous within terms such as 'crisis', 'necessity' or 'pressing need'. Lutzken v. City of Rochester, 184 N.Y.S.2d 483 (1959). On the other hand, the term 'contingent' or 'contingencies' used in a statute similar to § 14, signifies

***9** 'events which are liable to occur,' or events 'provisionally liable to exist, happen or take effect in the future . . .'.

Vandegrift v. Riley, 30 P.2d, supra at 522.

In applying a provision such as § 14, the determination of whether an emergency or contingency exists must be decided on a case by case basis and in each instance involves questions of fact. Vandegrift, supra; Gordon v. Gordon, (Ga.), 211 S.E.2d 374 (1974). Those facts must be determined by the Budget and Control Board.

When the facts are ascertained the exercise of discretion thereunder will not be disturbed by the Courts unless a lack of power to exercise the same or an abuse of discretion is made to appear.

Vandegrift v. Riley, supra; see also, 1936 Op. Atty. Gen., p. 182 (July 31, 1936).

Since the ascertainment of an 'emergency' or 'contingency', sufficient to authorize the Board to spend funds pursuant to § 14, involves questions of fact to be decided by the Board, it would be inappropriate for this office to resolve the particular question of whether the Board acted within its discretion in this instance in expending funds pursuant to § 14. This office has consistently stated that it cannot adjudicate questions of fact. See, e.g., Op. Atty. Gen., (December 9, 1983). It would instead be a matter for the courts to determine whether the Board acted outside its discretion pursuant to § 14.

Assuming this particular situation did in fact constitute an 'emergency' or 'contingency', it would appear that the Board possesses adequate authority at least temporarily to create a position not yet authorized in the General Appropriations Act. Section 2-7-69 provides in pertinent part:

Notwithstanding any other provision of law, whenever the Budget and Control Board shall authorize a state agency to exceed the number of positions authorized by the General Appropriations Act, the authorization for such positions shall terminate at the end of the fiscal year in which such authorization is made unless such authorization is included as a new position in the General Appropriations Act for the following year.

One other matter in this regard requires brief discussion. Section 14 does state that the Civil Contingent Fund shall not be used 'to increase the salary of any State employee.' It perhaps could be argued that the General Assembly did not intend to distinguish in this provision between a simple increase in the salary of a present employee and the hiring of a new employee whose position has not yet been approved by the General Assembly. However, on its face, the provision does not prohibit the funding of salary of a new employee. Moreover, as stated above, § 2-7-69 anticipates that the Budget and Control Board may create for a limited period of time positions not authorized in the Appropriations Act. When § 14 is read together with § 2-7-69, it would appear that the funding of such a position, pursuant to § 14, is not prohibited, so long as there exists an emergency or contingency.

***10** We believe that we have addressed each of the concerns expressed in your letter. Obviously, the Budget and Control Board possesses a number of other statutory powers; the constitutionality of each statute could not possibly be addressed in detail in a single opinion. While each of these statutory authorizations would, of course, have to be reviewed independently, we believe that, as a general rule, a court would, under existing authorities, uphold their validity based upon the long-standing sanction and acceptance which the Board has received from the courts, the Legislature and the people. Each of these statutes must be presumed constitutional; and unless one of them can be demonstrated to bestow 'an absolute, unregulated and undefined discretion' upon the Board, it would most probably be held constitutional by a court. Bauer v. S.C. Housing Authority, supra.

If you have any further questions about a particular statute, please do not hesitate to let us know. With kindest regards, I am
Sincerely yours,

T. Travis Medlock
Attorney General

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