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HENRY McMASTER
ATTORNEY GENERAL

April 19, 2006

Bob Schowalter, State Forester
South Carolina Forestry Commission
5500 Broad River Road
Columbia, South Carolina 29212

Dear Mr. Schowalter:

In a letter to this office you referenced that in prior years the various state appropriations acts contained language authorizing bonuses for state employees. For instance, in fiscal year 2003, pursuant to proviso 72.43 of Act No. 289 of 2002, entitled "carry forward", it was stated that "[n]otwithstanding any other provision of law, state agencies and institutions are allowed to spend carry-forward monies from the previous fiscal year so as to provide selected employees a one-time lump sum bonus, not to exceed one thousand dollars, based on objective guidelines established by the Budget and Control Board." For other years, the language varied. You indicated that in fiscal year 2005, the Forestry Commission paid bonuses above your carry forward amount. You also stated that the State Auditor's office is currently auditing the Forestry Commission and has indicated that the Commission was not authorized to pay bonuses in 2005 above the carry forward amount inasmuch as the bonus language remained in the section entitled "carry forward". You have requested an opinion of this office as to whether the payment of such bonuses in 2005 beyond the carry forward amount was authorized.

In examining your question, a review of the various provisions in the last several appropriations acts is instructive. As referenced, the 2002-2003 appropriations act, Act No. 289 of 2002, provided in section 72.43 captioned "GP: Carry Forward",

Each agency is authorized to carry forward unspent general fund appropriations from the prior fiscal year into the current fiscal year...Notwithstanding any other provision of law, state agencies and institutions are allowed to spend carry-forward monies from the previous fiscal year so as to provide selected employees a one-time lump sum bonus, not to exceed one thousand dollars, based on objective guidelines established by the Budget and Control Board.

In another provision, section 72.56, it was stated that

Notwithstanding any other provision of law, state agencies and institutions shall be allowed to spend federal and other sources of revenue to provide selected employees

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a one-time lump sum bonus not to exceed \$1,000, based on objective guidelines established by the Budget and Control Board. Agencies affected by this proviso shall maintain documents verifying that the bonuses funded were from savings resulting from increased efficiency in their operations. Also, agencies using federal funds for the bonus must show that the use of these funds is in compliance with federal law....

The 2003-2004 appropriations act, Act No. 91 of 2003, provided in section 72.41, also captioned "GP: Carry Forward",

Each agency is authorized to carry forward unspent general fund appropriations from the prior fiscal year into the current fiscal year...State agencies and institutions are allowed to provide selected employees a one-time lump sum bonus, not to exceed two thousand dollars, based on objective guidelines established by the Budget and Control Board.

In earlier drafts of the budget, there was a provision similar to 72.56 referenced above, captioned as 72.52, which provided that "(n)otwithstanding any other provision of law, state agencies and institutions shall be allowed to spend federal and other sources of revenue to provide selected employees a one time lump sum bonus..." However, such provision does not appear in the final appropriations act. In Act No. 91 of 2003, the appropriations act, reference is made to 72.52 as "deleted".

The 2004-2005 appropriations act, Act No. 248 of 2004, which provided for fiscal year 2005, the period in which the bonuses given by your agency are being questioned, set forth in section 72.30, again captioned "GP: Carry Forward",

Each agency is authorized to carry forward unspent general fund appropriations from the prior fiscal year into the current fiscal year...State agencies and institutions are allowed to provide selected employees a one-time lump sum bonus, not to exceed two thousand dollars, based on objective guidelines established by the Budget and Control Board.

I was informed by an individual with the State Budget and Control Board that while not expressly stated, it was intended that other sources of funds in addition to "carry forward" amounts could be utilized for bonuses for selected state employees.

In my opinion, it appears that it was the legislative intent by section 72.30 of Act No. 248 of 2004 that there not be any restrictions on the source of the funds for the bonuses authorized by such provision. As recognized in an opinion of this office dated October 13, 2005, the General Assembly is "...deemed to be aware of prior legislation and not to have done a futile thing." See also: Ingram v. Bearden, 212 S.C. 399, 47 S.E.2d 833 (1948); Op. Atty. Gen. dated June 28, 1996. A prior opinion of this Office dated December 22, 1988 stated that

. . . the General Assembly is presumed to act with full knowledge of the effect of an act and with full information as to the existing conditions and relevant facts. Also,

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the General Assembly is presumed to have knowledge of prior legislation when any subsequent legislation is enacted . . .

As referenced above, pursuant to Section 72.43 of the 2002-2003 appropriations act, state agencies were "...allowed to spend carry-forward monies from the previous fiscal year" for employee bonuses. While the source of funds for bonuses was later specifically identified in another provision of the same act, section 72.56, section 72.43 was specific in its identification of the funds available for such bonuses, i.e., carry-forward monies. Consistent with the opinions referenced previously, the General Assembly was presumed to be aware of prior restriction on the source of funds for employee bonuses when enacting subsequent provisions authorizing employee bonuses, such as section 72.30 of the 2004-2005 appropriations act. However, by failing to restrict the source of these funds in section 72.30, it is presumed that the General Assembly intended a change. As a result, in my opinion, the source of the funds for such employee bonuses was not limited to carry-forward monies.

Such a conclusion of intended change with there being no restriction on the source of such funds was specifically provided for in the 2005-2006 appropriations act, Act No. 115 of 2005. Section 72.30 of such act authorized each agency to carry forward specified unspent general fund appropriations. That provision, however, did not make any provision for employee bonuses. However, section 72.102 of such act did provide as follows:

72.102 (GP: Employee Bonuses) State agencies and institutions are allowed to spend state, federal, and other sources of revenue to provide selected employees lump sum bonuses, not to exceed two thousand dollars per year, based on objective guidelines established by the Budget and Control Board. Payment of these bonuses is not a part of the employee's base salary and is not earnable compensation for purposes of employee and employer contributions to respective retirement systems.

Consistent with the above, in my opinion, the Forestry Commission was authorized to pay bonuses above the carry forward amount in fiscal year 2005. Based upon my review, there were no specific restrictions in Act No. 248 of 2004 which restricted the source of funds for such bonuses to carry-forward monies.

If there are any questions, please advise.

Sincerely,



Charles H. Richardson

Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

