



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

March 10, 1997

The Honorable Herbert Kirsh  
Member, House of Representatives  
532A Blatt Building  
Columbia, South Carolina 29211

Re: Informal Opinion

Dear Representative Kirsh:

Attorney General Condon has forwarded your recent opinion request to me for reply. You inform this Office that the York County Legislative Delegation has dissolved the York County Transportation Committee, effective January 1, 1997, and transferred the authority to expend "C" funds to the York County Council. Apparently, prior to dissolution, the York County Transportation Committee approved the expenditure of "C" funds by several municipalities in York County. The York County Council now demands that the municipalities return the "C" funds. You ask for an opinion as to whether the municipalities must return to the York County Council those "C" funds approved and disbursed by the York County Transportation Committee prior to its dissolution on January 1, 1997.

In Tucker v. South Carolina Department of Highways and Public Transportation, 309 S.C. 395, 424 S.E.2d 468 (1992) (Tucker I), the Supreme Court declared the provisions of S.C. Code Ann. § 12-27-400 which required that a county legislative delegation approve the expenditure of "C" funds and allowed the delegation to contract for improvements were unconstitutional. The Court found these provisions unconstitutional because the legislative delegates may exercise legislative power only as members of the General Assembly enacting legislation. By constitutional mandate, the legislature may not undertake both to pass laws and to execute them by bestowing upon its own members functions that belong to other branches of government. In addition,

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action by a legislative delegation pursuant to a complete law cannot qualify as action to enact legislation and is therefore constitutionally invalid.

The General Assembly subsequently amended § 12-27-400 to require that the county legislative delegation appoint a county transportation committee to oversee the expenditure of "C" funds. The constitutionality of the amended version of § 12-27-400 was upheld by the Court in Tucker v. South Carolina Department of Highways and Transportation, 314 S.C. 131, 442 S.E.2d 171 (1994) (Tucker II). Thereafter, § 12-27-400 was recodified as § 12-28-2740 (Supp. 1995).

At the present time, the expenditure of the gasoline tax, commonly known as the "C" fund, among the various counties is governed by S.C. Code Ann. § 12-28-2740. According to § 12-28-2740(B):

The funds expended must be approved by and used in furtherance of a countywide transportation plan adopted by a county transportation committee. The county transportation committee must be appointed by the county legislative delegation and must be made up of fair representation from municipalities and unincorporated areas of the county.

It is well recognized that in the absence of any proof to the contrary, public officers are presumed to have properly discharged the duties of their offices and to have faithfully performed the duties which they are charged. South Carolina National Bank v. Florence Sporting Goods, Inc., 241 S.C. 110, 127 S.E.2d 199 (1962).

According to the facts presented in your opinion request, prior to its dissolution, the Transportation Committee approved and disbursed "C" funds to several municipalities in York County. Given the presumption of validity that attaches to the acts of public officers and the fact that the "C" funds were approved and disbursed while the Transportation Committee was an operational body, it must be presumed that the Transportation Committee's approval and disbursement of the "C" funds to the municipalities is valid. Consequently, since the actions of the Transportation Committee are presumed to be valid, the municipalities authorized by the Transportation Committee to expend the "C" funds need not return these funds.

I take this opportunity to note that in an opinion to the Honorable Robert W. Hayes, Jr., dated December 18, 1996, this Office found:

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According to the clear and unambiguous language of the ["C" funds] statute, the "C" funds must be approved by and used in furtherance of a countywide transportation plan adopted by a county transportation committee. Accordingly, the transfer of the authority to expend "C" funds from the county transportation committee to the county council would be improper under § 12-28-2740.

From the above stated conclusion, it logically follows that if the County Council does not have the authority to expend "C" funds, they do not have the authority to seek the return of these funds from the municipalities.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch  
Assistant Attorney General