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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

May 6, 1997

The Honorable Earle E. Morris, Jr.
Comptroller General
State of South Carolina
Post Office Box 11228
Columbia, South Carolina 29211

Re: Informal Opinion

Dear Mr. Morris:

You have raised a question regarding whether the actual name of the Comptroller General must appear upon state checks or whether the title of the Office "Comptroller General" is sufficient. You state the following by way of background:

> [n]early twenty eight years ago, the method of paying the obligations of the State underwent a significant change. This Office [Comptroller General] ceased to issue paper warrants signed by the Comptroller General that were negotiable instruments. Instead, the process of providing the State Treasurer with an electronic file of warrants was begun. The Treasurer began issuing checks based on these warrants and this process remains in place today.
>
> At the time of this procedural change, the name of the incumbent Comptroller General, Henry Mills, appeared on the face of the checks issued by the Treasurer. This was appropriate and in compliance with Section 11-3-140 of the South Carolina Code of Laws. After all, the authorization of warrants is performed by an individual who holds that position, not an office. The State Treasurer has recently

> decided to change the wording on checks to only reference my office instead of the name of the incumbent. Examples of previous and present versions of checks are enclosed for your review. In view of the fact that warrants and checks are property of the State, what authority does the State Treasurer have that allows him to change the information on the face of checks?

S.C. Code Ann. Section 11-3-140 provides as follows:

> [n]otwithstanding any other provisions of law to the contrary, the Comptroller General, after the installation of an electronic data processing system to serve the offices of Comptroller General and State Treasurer, shall present warrants for the payment of each State obligation directly to the State Treasurer, who shall then make payment of the obligation by check. The check form used by the State Treasurer for the payment of such obligation shall be so designated to indicate that payment is made upon authorization of a warrant of the Comptroller General. (emphasis added).

It is well-recognized that the primary guideline to be used in the interpretation of statutes is to ascertain and give effect to the intention of the Legislature. Belk v. Nationwide Mut. Ins. Co., 271 S.C. 24, 244 S.E.2d 744 (1978). A statute as a whole must receive a practical, reasonable and fair interpretation, consonant with the purpose, design and policy of the lawmakers. Caughman v. Cola., Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). The words used therein should be given their plain and ordinary meaning. Worthington v. Belcher, 274 S.C. 366, 244 S.E.2d 148 (1980). The interpretation should be according to the natural and obvious signification of the wording, without resort to subtle and refined construction for the purpose of either limiting or expanding the statute's operation. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942).

In Op. Atty. Gen., Op. No. 84-33 (March 29, 1984), we recognized the following constraints regarding the issuance of a warrant by the Comptroller General:

> [t]he Comptroller General may not issue a warrant in the absence of an express appropriation therefor. Grimball v. Beattie, 174 S.C. 422, 177 S.E. 688. Article X, § 8 Constitution of South Carolina 1895 as amended, provides:

> Money shall be drawn from the treasury of the State ... only in pursuance of appropriation made by law.

In Grimball, our Supreme Court stated that "[t]he object of the constitutional provision prohibiting the payment of money from the State treasury, except by appropriations made by law, is to prohibit expenditures of the public funds, at the mere will and caprice of those having the funds in custody without legislative sanction therefor." 174 S.C. at 431.

Section 11-3-130 provides that "all payments by the State Treasurer, except for interest on the public debt and the pay of officers, members and attaches of the General Assembly, shall be made on warrants drawn by the Comptroller General, and the vouchers for the same must be filed in his office." Moreover, Section 11-3-170 further states:

> [a]fter the approval of the annual appropriation act by the Governor, moneys may be obtained from the State Treasury only by drawing vouchers upon the Comptroller General. All vouchers, except for appropriated salaries, shall be accompanied by a classified and itemized statement of expenditures showing in each case the name of the payee and a list of articles purchased or services rendered, together with a certified statement that such articles or services were purchased or rendered exclusively for the purpose or activity for which the appropriation was made. These statements of expenditures shall be prepared on printed forms prescribed by the Comptroller General and they shall be prepared in duplicate, the copy to be retained for the purpose of assisting in the annual audit and as a permanent office record.

The issue presented by you is whether § 11-3-140 or any other provision of law requires the actual name of the Comptroller General to appear upon the face of checks issued by the State.

It is evident that the purpose of § 11-3-140 is to authorize the installation of an electronic data processing system in the offices of the Comptroller General and State Treasurer in order to facilitate and expedite payment of State obligations. Upon installation of such system, the statute authorizes the Comptroller General to "present warrants for the payment of each State obligation directly to the State Treasurer" who, in turn is required to pay such obligation "by check" upon presentation by the Comptroller. The statute further requires that the Treasurer "so designate[]" the check form "to indicate

that payment is made upon authorization of a warrant of the Comptroller General." The clear intention of such a requirement is to place the holder of such check on notice that it has been properly issued pursuant to the warrant of the Comptroller General.

I have been able to locate no decision by our courts or opinion of this Office which purports to interpret or construe § 11-3-140.

However, it is useful to reference definitions of the words used in the last sentence of this provision. The word "designate" generally means to indicate or specify; to point out; to give a name or title to; to characterize or to select and set aside for a duty. The American Heritage College Dictionary. The word "indicate" typically means to show the way to or the direction of; to point out or to serve as a sign or symptom or token of. In Lucas v. Williams, 218 Md. 322, 146 A.2d 764, 766 (1958), the Court concluded that "indicate" meant to give a suggestion of or to give reason to expect.

In Zinc Engravers v. Bowers, 151 N.E.2d 226 (1958), the Supreme Court of Ohio distinguished between the word "indicate" and the word "specify." Significantly, the Court concluded:

> [w]e hold, therefore, that where a blanket certificate of exemption on a form prepared by the Tax Commissioner is executed by a consumer and delivered to the vendor, containing a longhand identification of the material the transfer of which is sought to be excepted from the sales tax, and there are statutes and rules in force under which exemption of the identified material may reasonably be claimed, such certificate meets the statutory requirement of 'indicating' that the sale is not legally subject to the tax and is not invalid for failure to 'specify in detail.'

151 N.E.2d at 229.

The general law, moreover, fully supports the proposition that the personal involvement of a public officer who possesses certain prescribed statutory duties is not always necessary. In Krug v. Lincoln Nat. Life Ins. Co., 245 F.2d 848 (5th Cir. 1957), the Court made reference to the authority for the "delegation of duties of a public office, the duties of which are so manifold and voluminous that they could not be actually and personally performed by the person holding the office and charged with the performance of its duties." Id. at 853. At 21 Am.Jur.2d, Administrative Law, § 74, it is recognized that "[m]erely administrative ... functions may be delegated to assistants whose

employment is authorized." Moreover, this Office stated in an opinion, dated March 25, 1975 (Op. No. 4005), that the Attorney General "cannot personally respond to opinions in each instance; this must be delegated to Assistants whom he is authorized to employ." And as our Supreme Court stated in Ex Parte McLeod, 272 S.C. 373, 377, 238 S.E.2d 161 (1971), "[t]hese duties as chief prosecuting officer of the State are performed by the Attorney General, not only through his immediate staff, but through his constitutional authority to supervise and direct the activities of solicitors or prosecuting attorneys located in each judicial circuit of the State."

In Cowan v. State, 130 Ga. 320, 203 S.E.2d 311 (1973), the Georgia Court held that certification of copies of records by a deputy of the public official having custody thereof was legally sufficient. There, the Court stated that the requirement of certification by the official having custody

> ... does not mean that the certificate must be by a public officer personally, rather than by a deputy officer who certifies that he is the custodian of the records, as was apparently done here. This certificate was prima facie valid and there was no showing that the signer was not authorized to act either in his own capacity as a public officer or as a deputy for the chief officer nominally having custody.

In other words, the deputy was deemed legally authorized to act for the office rather than necessitating the chief officer himself having to act.

And in Federal Trade Commission v. Foucha, 356 F.Supp. 21 (N.D. Ala. S.D. 1973), the Court held that a statute allowing an agency to issue an order compelling witnesses to testify "with the approval of the Attorney General" permitted an Acting Assistant Attorney General to give the necessary approval. The Court concluded it would be "somewhat incongruous" if only the Attorney General himself could approve such orders.

The statute in question, § 11-3-140, does not literally address whether the Comptroller General's name must appear on the face of checks issued by the State. Certainly, nothing in the statute prohibits placement of the Comptroller General's name along with his title on the checks and apparently as you indicate, such practice has been followed for many years. While a court would give weight to past custom and practice, it appears that your question presents one more of policy--the designation of the "form" of the State checks--rather than a concrete legal issue. The purpose of the statute here is simply to provide assurance to the holder of such a check that its issuance rests upon the

authority of a Comptroller General's warrant and it can be argued that simple reference to the issuance of a warrant by the "Comptroller General" adequately serves this purpose. Cf. State v. Grate, 310 S.C. 240, 423 S.E.2d 119 (1992) (officer could rely upon simple verification by telephone that arrest warrant was outstanding in order to take defendant into custody). Our own Supreme Court has held that a complaint which does not allege that an official was the "director of public works" but only uses his individual name was an action against him individually, and not in his official capacity. Hanna v. McCain, 277 S.C. 419, 288 S.E.2d 810 (1982). Accordingly, given the fact that your question is more one of policy, rather than a legal issue, I would suggest that this matter be resolved amicably between your Office and the State Treasurer.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy 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 kind regards, I am

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General

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