

The State of South Carolina



Office of the Attorney General

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September 21, 1993

Brigadier General Charles L. Blount
Deputy Adjutant General
Office of the Adjutant General
1 National Guard Road
Columbia, South Carolina 29201-4766

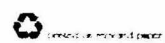
Dear General Blount:

This is in response to your letter of September 7, 1993 which requested that this Office review, restate and, if necessary, update its prior letter opinion to your agency dated January 26, 1977. At that time, your agency had in existence ARNG service contracts with the United States government which provided for shared funding for the South Carolina National Guard in a ratio of 75% federal and 25% state. As noted in our earlier opinion, the General Assembly of South Carolina had appropriated funds each fiscal year to meet the State's 25% share. Your agency's prior inquiry was whether the Military Department could make payment in furtherance of those service contracts in amounts in excess of the cash balance available in the appropriated fund.

Our former opinion acknowledged that then Section 1-702, Code of Laws of South Carolina (1962) made it unlawful to disburse state funds appropriated by the General Assembly in excess of the amounts and purposes stated in such appropriations, or to change or shift appropriations from one item to another unless such transfer be authorized by the General Assembly. That earlier opinion noted that the General Assembly had not authorized the Adjutant General to transfer or shift any of its appropriations and, accordingly, the State Comptroller General could not draw warrants for payment on the service contract fund which exceeded the cash balance available in that fund at the time of the warrant.

Your present letter advises that your agency now intends to enter into a Master Cooperative Agreement with the National Guard Bureau to establish the terms and conditions applicable to the contribution of federal funds (in the coming federal fiscal year)

Request Letter



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for the various National Guard programs within this State. Under such Agreement, the federal government can either advance funds to pay for its share of expenses or reimburse a State for the prorata federal share once full initial payment is made by the State concerned. Your inquiry seeks verification as to whether state law would continue to preclude use of the latter option.

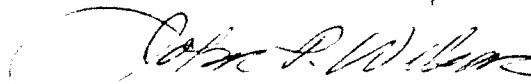
Please be advised that the provisions of former Section 1-702 of the 1962 Code of Laws are now recodified as Section 11-9-20, Code of Laws of South Carolina, 1976, such that the prohibition contained therein as to disbursing officers exceeding or transferring appropriations remains the law of this State. Additionally, Section 11-9-125, Code of Laws of South Carolina, 1976, as amended provides in pertinent part:

Federal and other funds must be expended before funds appropriated from the general fund of the State, to the extent possible, and any excess balances in accounts resulting from matching fund programs must be remitted to the general fund of the State...

Inasmuch as the statutory provisions relied upon in the earlier 1977 opinion remain in full force and effect; and the General Assembly has more recently provided for an express order of expenditure of funds respecting matching fund programs, this Office remains of the opinion that the Military Department would be unauthorized to make payments in furtherance of any Master Cooperative Agreement in excess of the amount or purpose stated in the Appropriations Act therefore. Accordingly, your agency must utilize the "federal advance" option rather than the "federal reimbursement" option as to any Master Cooperative Agreement hereinafter entered into.

With warm personal regards, I am

Yours very truly,



John P. Wilson
Executive Assistant for Civil Law

JPW:jca

REVIEWED AND APPROVED BY:

Robert D. Cook / RDC

Robert D. Cook
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