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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

August 26, 1997

George L. Schroeder, Director
Legislative Audit Council
400 Gervais Street
Columbia, South Carolina 29201

Re: Informal Opinion

Dear Mr. Schroeder:

You reference Section 9.4 of Part I B of the 1996-97 Appropriations Act. Such Proviso, which is part of the Comptroller General's Section, states that:

> [t]here shall be a fee for processing payroll deductions, not to exceed 5 cents, for insurance plans, credit unions, deferred compensation plans and professional associations per deduction per pay day. Proceeds shall be remitted to the General Fund of the State. This fee shall not be applied to charitable deductions.

You question whether the Proviso applies "only to the Comptroller General's Office or should all state agencies, including universities and technical colleges, be charging this fee?" In addition you note that you have contacted officials at the University of South Carolina and Clemson University who have indicated that they are not charging a fee for processing payroll deductions.

Law / Analysis

A number of rules of statutory construction are relevant to your inquiry. First and foremost, is the long-recognized principle that legislative intent must prevail whenever it can be reasonably ascertained. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). A statute as a whole must receive a practical, reasonable and fair interpretation consonant

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Request Letter

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). Words used must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). A court must usually apply the terms of a statute according to their literal meaning. Id.

In an Opinion dated November 4, 1981, this Office addressed the question of whether S.C. Code Ann. Sec. 8-11-80 permits the chief financial officers of State agencies and institutions maintaining payroll accounts separate from the Comptroller General to make payroll deductions for insurance. There, we noted that Section 8-11-80, which permits the Comptroller General, upon the request of employees of the State, to make deductions for the payment of premiums for life, hospital and other types of insurance plans, is somewhat ambiguous. We observed that this provision appears to "restrict this deduction to payroll accounts administered by the Comptroller General ..." because it does not contain the language found in other payroll deduction statutes which refer to the "Comptroller General or chief finance officers of state agencies and institutions maintaining payroll accounts separate from the office of the Comptroller." [Referencing e.g. Act 149 of 1981, now § 8-11-91. See also, Section 8-11-93 ["Comptroller General or by the chief finance officer of a state agency or institution maintaining separate payroll accounts ... ."]; § 58-11-95 [Id.]; § 8-11-97 [Id.]; § 8-11-83 [Comptroller General "and all other State agencies upon request of the employees of the State"]; § 8-11-99 [Comptroller General "at the request of a state employee"]. However, we also noted that § 8-11-80 referred to making payroll deductions "upon request of employees of the State." Since such broad language would encompass "employees of the Department of Mental Health ...", we thus concluded that

> [d]espite the restrictive language of the statute, our review of this matter did not disclose a legislative intent to exclude from this program State employees of agencies which maintain their own payrolls or indeed any reason why they should be excluded. In our opinion, the Legislature intended to make this deduction available to all State employees and the reference only to the Comptroller General's payroll was a legislative oversight. Therefore, it is the opinion of this office that Section 8-11-80 does permit your Department [Department of Mental Health] to make payroll deductions for insurance.

The Proviso in question deals with a fee for processing four particular payroll deductions -- insurance plans, credit unions, deferred compensation plans and professional associations. The fee is expressly made inapplicable to "charitable deductions." Examination of the authority for these deductions and exemptions under State law reveals no exact pattern. As noted above, we have previously opined that agencies which maintain their own payroll possess authority to make payroll deductions for insurance plans. Section 8-11-98 provides authority for payroll deductions to any lawfully chartered credit union; however, such statute speaks only with respect to the Comptroller General or "any official of a political subdivision of the State which is authorized to disburse funds in payment of salaries or wages of public officers or employees ... ." Moreover, this statute expressly designates the Comptroller General to "prescribe any procedures necessary to carry out the provisions of this section." On the other hand, the "principal fiscal officer of each state agency" is authorized pursuant to § 8-23-40 to "defer any portion of the employee's compensation." <u>See also</u>, <u>Op.Atty.Gen.</u>, Op.No. 93-80. With respect to charitable deductions (which are, under the statute, exempt from the fee), clearly, § 8-11-91 and accompanying statutes authorize the chief finance officers of state agencies and institutions maintaining payroll accounts separate from the office of the Comptroller General to make deductions for such contributions from the salaries and wages of their officers and employees. I can find no enabling statute, however, with respect to deductions for professional associations.

The Proviso in question makes no reference whatever to either the Comptroller General or to "the chief finance officers of state agencies and institutions maintaining payroll accounts separate from the office of the Comptroller General." Indeed, the only "clue" in the text of the statute is that proceeds from the fee shall be remitted to the State's General Fund. Of course, placement of the statute in the Comptroller General's Section of the Appropriations Act is instructive, indicating perhaps that the Legislature intended the Proviso to be applicable only to the Comptroller General.

It is clear that, generally speaking, an agency's authority to charge a fee must come from a specific enabling statute. <u>Op.Atty.Gen.</u>, Jan. 17, 1996 (Informal); <u>Op.Atty.Gen.</u>, Op.No. 2271 (May 4, 1967). This doctrine is part and parcel of the long-recognized rule that the authority of a state agency created by statute "is limited to that granted by the legislature." <u>Nucor Steel v. S.C. Public Service Comm.</u>, 310 S.C. 539, 426 S.E.2d 319 (1992). An agency "has only such powers as have been conferred by law and must act within the authority granted for that purpose." <u>Bazzle v. Huff</u>, 462 S.E.2d 273 (S.C. 1993).

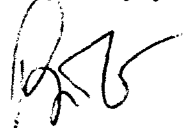
The General Assembly may indeed have intended this Proviso to apply to other state agencies (with separate payrolls) in addition to the Comptroller General. Such would make sense because most of these payroll deductions appear to be made by other state agencies as well as the Comptroller General. If it is reasonable to collect an administrative fee to reimburse for costs incurred by the State for these payroll deductions, one would think such a fee would be applicable to all agencies which administer these payroll deductions. However, the General Assembly could easily have specifically said that the Proviso is applicable not only to the Comptroller General, but as well to the chief financial officers of agencies and institutions maintaining payroll accounts separate from the Comptroller General or could have used some other similar broad language. Unfortunately, the General Assembly did not do so. Indeed, the one thing the General Assembly did do was to place the Proviso in the Comptroller General's Section of the Appropriations Act. While not definitive, this is certainly instructive, particularly since it would not be expected that other agencies would think to look in the Comptroller General's Section to see if they possessed authority to charge the requisite fee.

Thus, in view of the well-recognized principle that a fee must be charged only with clear statutory authority, this is a matter which should be clarified by the Legislature. While the Legislature may well have intended the Proviso to have broad applicability, I cannot read the statute so broadly in light of the language and particularly its placement. Until legislative clarification is forthcoming, therefore, I am of the view that the administrative charge for the enumerated deductions should probably not be undertaken by other state agencies which have not charged this fee heretofore.

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

RDC/ph