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The State of South Carolina



Office of the Attorney General

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August 27, 1991

The Honorable Grady L. Patterson, Jr.
State Treasurer
P. O. Drawer 11778
Columbia, S.C. 29211

Dear Mr. Patterson:

As Attorney General Medlock advised you, he referred your letter of July 23, 1991, to me for response. Referencing Act No. 612, §41.5, 1990 S.C. Acts 3045, you write:

After reviewing the Proviso, please advise me as to whether we may transfer funds in accordance with the provisions listed to the Department of Mental Retardation from a current account for reimburse [sic] of a payment made in a prior fiscal year. Sufficient funds do exist in the Department's appropriate debt service account to cover such an expenditure.

Section 41.5 of the 1990-91 appropriations act provides:

Revenues not to exceed \$126,000 from clients fees, credited to the debt service fund and not required to meet the Department's debt service requirement, may be expended only in the current fiscal year to promote expanded prenatal diagnosis of mental retardation and related defects by the Greenwood Genetic Center.

As you noted in your letter, an almost identical proviso was included in the 1989-90 appropriations act:

Revenues not to exceed \$126,000 from client fees, credited to the debt service fund and not required to meet the Department's debt service requirement, may be expended only in FY 1989-90 to promote expanded prenatal

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diagnosis of mental retardation and related defects by the Greenwood Genetic Center.

According to your letter, the Department of Mental Retardation has recently requested reimbursement pursuant to these provisos for expenditures which occurred during fiscal year 1989-90. You also state that the expenditures were apparently for the purpose authorized by the provisos. This office must, of course, assume the facts as you have provided them.

Statutory construction of the quoted provisos is necessary to provide you with the requested advice. Of course, the primary function of statutory construction or interpretation is to ascertain the intention of the legislature which does not require looking beyond the words of the statute when the legislative intent appears on the face of the statute. Wright v. Colleton County School Dist., 301 S.C. 282, 391 S.E.2d 564 (1990). Where a statute is clear and unambiguous, its terms must be given their literal meaning. Crown Cork and Seal Co., Inc. v. South Carolina Tax Comm'n, __S.C.__, 394 S.E.2d 315 (1990). In construing a statute, its words must be given their plain and ordinary meaning without resort to a subtle or forced construction to limit or expand the statute's operation. Bryant v. City of Charleston, 295 S.C. 408, 368, S.E.2d 899 (1988).

In addition to the two quoted provisos, two other statutes are relevant to your inquiry. S.C. Code Ann. §11-9-30 (1976) provides:

In accordance with the terms of Section 10, Article 10 of the Constitution of South Carolina, as amended, the fiscal year of the State shall begin on the first day of July and end on the thirtieth day of June each year. All officers or servants of the State who are required to perform any duty at a specific time contingent upon the beginning and ending of the fiscal year shall perform such duties at such a time as will conform to the fiscal year beginning July first and ending June thirtieth. Nothing herein contained shall be held to affect the date for the assessment, levying or collection of any tax not provided for by law nor to affect the submitting of reports to the General Assembly. All officers or servants of the State shall keep their accounts and records in conformity with such fiscal year, opening them on the first day of July and closing them on the thirtieth day of June each year.

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S.C. Code Ann. §2-7-75 (1976) provides:

All state funds appropriated shall be used and all federal and other funds may be used for the operation of state agencies and institutions for the fiscal year for which they are appropriated or made available for use. All agencies and institutions are directed to expend state appropriated funds in strict accordance with the line item appropriations as authorized by the annual appropriations act except for such transfers of funds as may be approved by the Budget and Control Board under its authority as set forth in the appropriations act or other provisions of law. When practicable all agencies and institutions having federal or other funds available for the financing of their operation shall expend such funds in accordance with the line appropriations. The authorization to spend federal and other funds shall be reduced to the extent that receipts from these sources do not meet the estimates as reflected in each section of the appropriation act. The Budget and Control Board shall give consideration to the intent of the General Assembly expressed in this section when exercising its responsibility for reviewing grant requests as set forth in the annual appropriations act.

This Office has issued prior opinions concerning §11-9-80 and §2-7-75. Applying §11-9-80, this Office previously opined that "absen[t] a statute providing for the reopening of accounts and records, there is no authority to reopen such accounts." S.C. Att'y Gen. Op., Nov. 20, 1978 (from Barbara J. Hamilton to Dr. Jack S. Mullins). Analyzing §2-7-75, this Office opined:

This statute requires that the funds be used for the fiscal year for which they are appropriated and indicates that they may not be used for previous years' operations. Thus, the State Department of Education may not use its current appropriations to correct errors in the payment of teachers' salaries for previous years. In order to make these payments, it would need legislative authorization.

S.C. Att'y Gen. Op., Jan. 29, 1980 (from J. Emory Smith, Jr. to Dr. Charlie G. Williams). Concluding that expenditures for salaries from one fiscal year for a prior fiscal year are prohibited by §11-9-80 or 2-7-75, these opinions appear to hinge upon the use of

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currently appropriated funds to pay prior salaries or reopening an account or record to pay an expense incurred previously. See also S.C. Att'y Gen. Op., Jan. 18, 1983 (An opinion from J. Emory Smith, Jr. to the Honorable Edgar A. Vaughn, Jr., CPA, considered whether a school district could now receive the difference between the amount of reimbursement received in two prior fiscal years for school bus drivers' salaries and the amount it should have received. That opinion observed: "State law indicates that the appropriations should be used to meet only obligations for the year in which the appropriations are made, and no provisions in the prior year Department of Education budgets would allow the carry over of funds for school bus drivers salaries from one fiscal year to the next."); S.C. Att'y Gen. Op., May 1, 1984 (An opinion from Patricia D. Petway to Gerald C. Smoak, Esquire, concluded that "expenses, such as salaries to be paid to county employees, incurred by a county during one fiscal year, may be paid only from funds appropriated for that fiscal year.").

To respond to your inquiry, a determination is necessary of the meaning of "expended" as used in the quoted provisos. "Expend" is defined as "To pay out, lay out, consume, use up; normally implying receiving something in return." Black's Law Dictionary 577 (6th ed. 1990).

As I understand the facts related by you, the expenditures occurred appropriately in fiscal year 1989-90 but the Department of Mental Retardation did not request reimbursement from the appropriate debt service fund during that fiscal year. Therefore, the Department of Mental Retardation did expend the funds in fiscal year 1989-90 as required by the quoted provisos. I also understand that sufficient funds do now exist in the appropriate debt service account to reimburse the Department of Mental Retardation. Thus, this reimbursement does not involve the expenditure of currently appropriated funds to pay for expenses of a prior fiscal year or reopening an account or record to pay an expense incurred previously. Consequently, neither the quoted provisos nor §§11-90-80 and 2-7-75 appear to prohibit the reimbursement of the Department of Mental Retardation contemplated in your letter.

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I hope the above will be of assistance to you. If I can answer any questions, please advise me.

Sincerely,

Samuel L. Wilkins

Samuel L. Wilkins
Assistant Attorney General

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REVIEWED AND APPROVED BY:

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