

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-734-3660

April 2, 1990

Margaret C. Stilwell, CPA
Deputy State Auditor
Office of the State Auditor
P. O. Box 11333
Columbia, South Carolina 29211

Dear Ms. Stilwell:

As you are aware, your letter of January 24, 1990 to Chief Deputy Attorney General Edwin E. Evans has been referred to me for response. In that letter, you referenced Section 129.38 of the 1989-90 Appropriation Act which provides as follows:

"...Professional and Occupational Licensing Agencies must generate revenue equal to 115 percent of their appropriation and are exempt from budget reductions. In any year during which any Professional and Occupational Licensing Agency does not generate the required revenue as provided above, it shall generate sufficient revenue in the succeeding year to offset the prior deficit, in addition to meeting requirements for the current year. Professional and Occupational Licensing Boards may adjust fees, if necessary, to generate revenue at least fifteen percent above the 1989-90 state appropriation."

In light of Section 129.38, you asked the following questions of this Office.

(1) Would a Professional Licensing Agency (agency), which expended less than its appropriated amount, be in compliance with Section 129.38 if the agency generated revenue in an amount equal to at least 115% of its expenditures but less than 115% of its appropriation?

Margaret C. Stilwell, CPA
Page Two
April 2, 1990

(2) Would the "lapsed appropriation", or the amount of the appropriation not expended by the agency, be considered a "generated revenue"?

In considering your first question, one must take note of the principle of statutory interpretation which holds that "where a statute is clear and unambiguous, there is no room for construction and terms of the statute must be given their literal meaning." Duke Power Co. v. S. C. Tax Commission, 292 S.C. 64, 354 S.E.2d 902, (1987). Here, the provisions of Section 129.38 plainly and unambiguously require that agencies generate revenue equal to 115% of their appropriations. There is no language permitting an agency to generate revenue equal to 115% of its expenditures and the terms of the statute do not reveal any legislative intent to grant such permission.

Consequently, the statute must be construed to mean exactly what it says, i.e. regardless of their actual expenditures, agencies must generate revenue equal to 115% of their appropriations. Accordingly, an agency which generates revenue that is less than 115% of its appropriation would not be in compliance with Section 129.38, even though the agency expended less than its appropriated amount.

Your second question requires that one invoke another cardinal principle of statutory construction. That is, the words of a statute "must be given their plain and ordinary meaning, without resort to subtle or forced construction to limit or expand the statute's operation." Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14, (1984).

The word "generate" is commonly taken to mean "to beget, to produce, to cause to be". 38 C.J.S. Generate, p.768; 18 Words and Phrases, p.54. Viewed in this context, it could hardly be argued that appropriated funds not spent by an agency are funds which the agency produced or caused to come into being.

Moreover, it appears to be the intent of the legislature that agencies produce revenue, rather than simply count lapsed appropriations as "generated" revenue. This legislative intent is manifested in the provision of Section 129.38 which permits agencies to adjust fees, if necessary, to generate the required amount of revenue.

Margaret C. Stilwell, CPA
Page Three
April 2, 1990

By contrast, Section 129.38 does not contain any evidence of legislative intent to condone the counting of unspent appropriations as "generated" revenue. In construing a statute, the intent of the legislature must prevail. State v. Salmon, 270 S.C. 344, 306 S.E.2d 620, (1983). Therefore, it must be concluded that appropriated funds not spent by an agency would not be considered to be "generated revenue".

I trust that you will find the foregoing information to be responsive to your concerns. Please contact me if I can be of further assistance.

Very truly yours,



Wilbur E. Johnson
Assistant Attorney General

WEJ/fc

REVIEWED AND APPROVED:



Donald J. Zelenka
Chief Deputy Attorney General



Robert D. Cook
Executive Assistant for Opinions