

# The State of South Carolina



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June 18, 1991

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

Dear Mr. Morris:

In a letter to this Office you raised the following question

Suppose that the State experienced a year-end operating deficit greater than could be covered by mid-year appropriation reductions and total depletion of both the Capital Reserve and General Reserve Funds. What specific action would the State be required to take to remedy the remaining deficit?

Formerly, Article X, Section 2 of the State Constitution provided:

The General Assembly shall provide for an annual tax sufficient to defray the estimated expenses of the State for each year, and whenever it shall happen that the ordinary expenses of the State for any year shall exceed the income of the State for such year the General Assembly shall provide for levying a tax for the ensuing year sufficient, with other sources of income, to pay the deficiency of the preceding year together with the estimated expenses of the ensuing year. (Emphasis added).

Such provision was cited in prior opinions of this Office which indicated that in situations where a deficit occurs, the General Assembly was mandated to act accordingly. See: Opins. of the Atty. Gen. dated February 10, 1976 and March 20, 1959.

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However, the State Constitution was amended in 1985 so that Article X, Section 7(a)1/ presently reads:

The General Assembly shall provide by law for a budget process to insure that annual expenditures of state government may not exceed annual state revenue.

The title to Act No. 520 of 1984 which proposed the amendment stated in part:

A JOINT RESOLUTION PROPOSING AMENDMENTS TO SECTION 7 OF ARTICLE X OF THE CONSTITUTION OF SOUTH CAROLINA, 1895, RELATING TO THE LEVY OF TAXES TO MEET EXPENSES AND DEFICITS OF STATE GOVERNMENT, SO AS TO REPHRASE A PORTION OF THE SECTION TO PROVIDE THAT THE GENERAL ASSEMBLY SHALL PROVIDE BY LAW THAT THE ANNUAL STATE BUDGET MUST BE BALANCED ....

As set forth on the ballot the question regarding the amendment to Article X, Section 7 stated:

Must section 7 of Article X of the Constitution of this State be amended so as to provide that the General Assembly shall provide by law for a budget process which shall insure that annual expenditures of state government may not exceed annual state revenues and to delete provisions requiring the General Assembly to provide an annual tax sufficient to defray estimated expenses of the State?

The explanation to the amendment stated:

Question 1 would make the General Assembly provide by law a balanced budget each year.

Of course, Article III, Section 36 of the State Constitution provides for a general reserve fund and a capital reserve fund and sets forth the specific procedure governing these funds. However, your question relates to what cause of action is required if the two reserve funds are not adequate to cover any deficit which may occur.

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1/ Pursuant to Act No. 71 of 1977, Article X, Section 2 was amended to be codified as Article X, Section 7(a) of the State Constitution.

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As noted above, prior to 1985, the specific procedures for dealing with a year-end deficit were set forth in the State Constitution. Now, however, it appears that the State Constitution merely leaves it to the General Assembly to insure that the state budget is balanced. The language of Article X, Section 7(a) simply states that the General Assembly shall provide for a budget process to insure a balanced budget but does not specify the manner or procedure for removing any deficit which may occur. In the past, the General Assembly has seen fit to enact methods to meet the expenses of the State, such as Sections 11-9-230 through 11-9-300 of the Code which authorize the State Budget and Control Board to borrow funds. See also, Act No. 612 of 1990, Section 129.15 (1990-1991 Appropriations Act) [General Assembly has delegated to the Budget and Control Board the authority to reduce appropriations in order to insure a balanced budget.] However, from the standpoint of the State Constitution, it remains within the discretion of the General Assembly, pursuant to Article X, Section 7(a), to determine as a matter of state policy what specific course of action should be taken where an operating deficit occurs at the conclusion of a fiscal year.

With kind regards, I am

Very truly yours,



Charles H. Richardson  
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:



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