

# The State of South Carolina

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October 9, 1992

The Honorable John Courson  
Senator, District No. 20  
Post Office Box 142  
Columbia, South Carolina 29202

Dear Senator Courson:

You have advised that, in response to the State's need for safe, affordable, and adequate housing for the state's low and lowest income citizens, the General Assembly adopted Act No. 410 in 1992. A Housing Trust Fund has been established by the act, to be funded by an additional tax on instruments of conveyance of realty pursuant to S.C. Code Ann. § 12-21-380, and to be expended for the creation and preservation of safe, decent, and affordable housing for the lower and very low income individuals and households of the State. With respect to distribution of the funds so collected, you have asked for our interpretation of new § 31-13-445, which provides:

No more than twenty percent of trust fund monies expended in a fiscal year may be for projects in any one county.

As with interpretation of any statute, the primary objective of the courts and also this Office is to determine and effectuate legislative intent if at all possible. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). Words used in a statute are to be given their plain and ordinary meanings. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980). Where the language of a statute is clear and unambiguous, the literal language must be applied. State v. Goolsby, 278 S.C. 52, 292 S.E.2d 180 (1982). In construing a statute, all provisions must be given force and effect, if consistent. Bradford v. Byrnes, 221 S.C. 255, 70 S.E.2d 228 (1952).

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The language of § 31-13-445 is clear and free from ambiguity, and thus it must be applied literally and accorded its plain and ordinary meaning. It is the opinion of this Office that, in any one fiscal year, not more than twenty percent of funds expended from the Housing Trust Fund may be expended in any one county for projects undertaken with Fund monies. The difficulty, from accounting and administrative points of view, comes from the fact that until the end of a given fiscal year, it is virtually impossible to calculate the actual percentage going to the various counties, as the total revenues and the total monies expended cannot be determined until that time. We also observe that no penalty attaches if a county should receive more than twenty percent of the funds expended in any one year. Notwithstanding those problems, the statute plainly requires that not more than twenty percent of the fund be expended in any one county in any one fiscal year.

Other questions may be raised about the meaning of the term "expended," particularly in the accounting sense. Your letter seems to indicate that all funds collected during a fiscal year would be expended in that year. Funds may accrue to the benefit of the Housing Trust Fund during a given fiscal year but may not actually be received by the Tax Commission until the next fiscal year; thought should be given to the accounting method to be used in this regard. At the same time, monies from the Housing Trust Fund may be committed for projects during one fiscal year but not actually expended for whatever reason until the next fiscal year. Further, was the intent of the General Assembly to completely expend (or commit for expenditure) the Fund each year, so that a zero balance occurs on each July first? Consideration might be given to resolving these questions legislatively.

We were also asked by a legislative member of the Homeless Task Force to address the role of the advisory committee to be established by § 31-13-430, vis a vis the roles of executive director of the South Carolina State Housing Finance and Development Authority and the Board of Commissioners of the Authority. The advisory committee is to be composed of specified individuals; § 31-13-430(C) provides:

The advisory committee shall meet at least four times a year to advise the board of particularly critical housing needs, to recommend to the board those areas of the State in which requests for proposals for developments should be published, the type of development

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for which proposals should be solicited, and to provide other pertinent information to the board as the members of the advisory committee consider appropriate. ...

The executive director, by § 31-13-440(A), is responsible for day-to-day operations of the Fund. Subsection (B) requires the executive director to, among other things, "develop and implement a comprehensive program for the use of the fund" to ensure that rural and urban areas receive an equitable distribution of monies; provide technical assistance to applicants; develop and implement an application and selection system; and other duties. The Board of Commissioners, by § 31-13-440(A), is to adopt procedures to guide the executive director; in addition, § 31-13-450 provides other responsibilities of the Board in evaluating proposals and authorizing withdrawal of funds from the Trust Fund.

In evaluating the foregoing statutes, it appears that the role of the advisory committee is to make recommendations to the Board as to areas of the state from which proposals should be sought, the types of developments for which proposals should be solicited, and to provide other pertinent information to the Board. Such duties are advisory, informational, or recommendatory. The Board would actually exercise the discretion to solicit, evaluate, and fund proposals. The executive director would exercise the functions listed in § 31-13-440, in accordance with procedures adopted by the Board.

While the functions of the advisory committee are limited, the spirit of the South Carolina Housing Trust Fund Act (Act No. 410 of 1992) would dictate that due regard be given to the recommendations of the advisory committee. The committee is to be comprised of such individuals representing various housing interests and also representing very low and lower income households. The legislative findings contained in the Act evidence an intent to provide access to safe, decent, sanitary, and affordable housing, and other parts of the Act evidence an intent to allocate monies equitably between rural and urban areas. The committee comprised of the specified members would certainly be in a position to offer valuable input into the decision-making process. If a role other than advisory or recommendatory was envisioned by the General Assembly, consideration should be given to legislative clarification.

We hope that the foregoing is responsive to your inquiry. Please advise if clarification or additional assistance should be needed.

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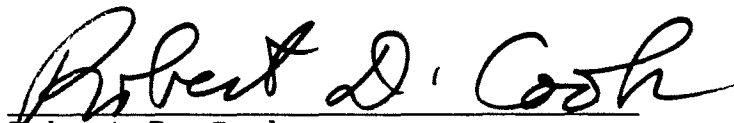
With kindest regards, I am

Sincerely,

*Patricia D. Petway*  
Patricia D. Petway  
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



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cc: The Honorable Gilda Cobb-Hunter