

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

October 10, 1989

SUBJECT: Taxation and Revenue - Effect of the annual Appropriations Bill on general laws that allocate certain taxes to specific purposes.

SYLLABUS: The General Assembly may in the annual Appropriations Act constitutionally allocate taxes that are levied under general law for specific purposes to fund the costs of other purposes.

TO: Honorable Phil P. Leventis
Senator, District No. 35

FROM: Joe L. Allen, Jr. *JLA*
Chief Deputy Attorney General

QUESTION: May the General Assembly in the annual Appropriations Act allocate taxes levied under general law for specific purposes to fund other purposes?

APPLICABLE LAW: Article III, Section 1, Article X, Section 5 of the South Carolina Constitution and Act 189, Acts of 1989.

DISCUSSION:

Some general statutes allocate specific taxes to the counties, municipalities or for other purposes. (In example, Sections 12-21-1120, 12-33-30 and 12-35-1550.) In the State's annual Appropriations Act, the allocation under the general statute is modified. Your inquiry is whether this can constitutionally be done. For the reasons hereinafter set forth, we advise that there is no constitutional prohibition to the modifications.

The Constitution in Article III, Section 1, vests the legislative power in the General Assembly. That power is absolute unless constrained by the Constitution of this State or of the United States and properly adopted laws of the Federal Government. (See Clarke v. South Carolina Public Service Authority, 177 S.C. 427, 181 S.E. 481.)

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It has long been settled that the authority to amend a statute rests with the General Assembly. An act of one General Assembly cannot restrict the power of a subsequent General Assembly to amend or repeal an existing law.

"There can be no vested right in an existing law which precludes its change. In this respect, it has been declared that it is the function of the legislature, and of the legislature alone, to change rules of law, that each subsequent legislature has equal power to legislate upon the same subject, and that one legislature cannot abridge the power of a succeeding legislature. . ." 73 Am.Jur.2d, Statutes, Section 34. (For South Carolina cases see 17 S.C.D., Statutes, Key 129.)

The General Assembly unless constitutionally restrained thus has the authority to modify the requirements of any existing law including those that allocate the proceeds from a specific tax.

The annual Appropriations Act by specific provisions has the effect of suspending the provisions of a conflicting law. State ex rel McLeod v. Mills, 256 S.C. 21, 180 S.E.2d 638. The language the Court relied upon for its holding in that case is also set forth in Act 189, Acts of 1989, the Appropriations Act. It provides that:

"All Acts or parts of Acts inconsistent with any of the provisions of Part I, Part III or Part IV of this Act are hereby suspended for the Fiscal Year 1989-90."

The same also repeals other provisions that are inconsistent with Part II of the Act.

The next inquiry is whether Article X, Section 5, of the Constitution precludes the modification of the general law.

Article X, Section 5, of the Constitution provides in part that:

". . . Any tax which shall be levied shall distinctly state the public pur-

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pose to which the proceeds of the tax shall be applied. . ."

The 1989 Act satisfies this requirement. Part of the heading of the Act is that it is:

"AN ACT TO MAKE APPROPRIATIONS TO MEET THE ORDINARY EXPENSES OF THE STATE GOVERNMENT . . . "

In Section 1.1 of Part I, of the Act there is provided:

"For the Fiscal year 1989-90 except as hereinafter specifically provided, all general state revenues derived from taxation, licenses, fees or from any other source whatsoever, and all institutional and departmental revenues or collections, including income from taxes, licenses, fees, the sale of commodities and services, and income derived from any other departmental or institutional source of activity, shall be remitted to the State Treasurer . . ."
." See also Section 122 of Part 1 of the Act, Aid to Subdivisions.

By this language and that found in Section 122 of Part 1 of the Act, the General Assembly suspends for the fiscal year the purposes for which the taxes were levied under the general law. The Act further designates the purpose for which the taxes are levied; that being to fund the operations of state government for the designated year.

CONCLUSION:

The General Assembly may in the annual Appropriations Act constitutionally allocate taxes that are levied under general law for specific purposes to fund the costs of other purposes.

JLAJr:wcg