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# The State of South Carolina



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March 13, 1985

The Honorable Richard W. Riley  
Governor of the State of South Carolina  
Post Office Box 11450  
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Dear Governor Riley:

You have asked for the opinion of this Office on when the phase-in required by Section 11-11-310, Code of Laws of South Carolina (1984 Cum.Supp.), is to begin.

Section 11-11-310 (formerly Section 11-11-120) provides the following in the fifth paragraph:

After 1990, the General Assembly shall not approve an annual General Fund Operating Budget in excess of ninety-five percent of the annual official revenue estimate. Provided, initially beginning in 1986, the General Assembly shall annually reduce the annual General Fund Operating Budget by one percent until the annual General Fund Operating Budget is not in excess of ninety-five percent of the annual official revenue estimate. ...

By these actions, the General Assembly is putting into effect its expressed intent that the budgetary process be stabilized and further that year-end deficit spending be prohibited. See Section 11-11-310 (first paragraph) and Part II, Section 12, Act No. 219, 1977 Acts and Joint Resolutions.

By an opinion of this Office dated September 18, 1984, we advised that Section 11-11-120 (now § 11-11-310) would refer to

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fiscal 1985-86, rather than fiscal 1986-87. We reiterate that conclusion.

Now, you wish to know whether Section 11-11-310 mandates any particular time within 1985-1986 when the General Assembly must begin implementing its annual reductions. We would advise that there is nothing in the statute which makes such a requirement. Section 11-11-310 simply refers to years generally; indeed, with respect to 1986, the provision requires only that such implementation begin "in" 1986. Thus, if Section 11-11-310 means fiscal 1986, so long as such implementation begins during that year, the requirements of the provision would be met.

Moreover, Section 11-11-310 does not specifically identify whether the dates set forth therein refer to calendar years or fiscal years. No mention of fiscal year, as opposed to calendar year, is made in this portion of the statute. And as we noted in our previous opinion the Supreme Court of South Carolina has earlier noted that "where reference is made to a certain year, the presumption is that the calendar year is made." State ex rel. Buchanan v. Jennings, 68 S.C. 411, 47 S.E. 683 (1904). While the Court did, in that case, ultimately conclude that the statutory reference under consideration meant the "fiscal" year, the fact that the General Assembly did not specifically mention fiscal year in Section 11-11-310 must be noted; certainly, such mention could have easily been made.

Therefore, because there is some genuine dispute as to the precise meaning of whether the date references contained in Section 11-11-310 are to fiscal years or calendar years, we believe the reading which more fully reconciles these various interpretations is as follows. So long as the General Assembly implements the reductions "in" 1986 (preferably by virtue of the Appropriations Act being made effective prior to July 1, 1986) the express statutory requirements have been met. Such a reading is in accord with the fact that the entire thrust of Section 11-11-310 focuses upon action by the General Assembly and not when the budgetary reductions actually take place. Typically, the General Assembly now enacts the General Appropriations Act effective prior to July 1 of each year anyway. See, Act No. 512 of 1984 (effective June 28, 1984); see also, Op. Atty. Gen., July 25, 1984. Thus, as long as the General Assembly acts to reduce the budget by 1% before July 1, 1986 and by an additional 1% prior to July 1 of each succeeding year (up

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to 5%), any possible dispute as to whether fiscal year or calendar year was intended would be resolved. Of course, the General Assembly is the body most appropriate to resolve any such conflicts and furthermore appropriations are solely within the province of the General Assembly.

Sincerely,

*Patricia D. Petway*

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Assistant Attorney General

PDP:djg

REVIEWED AND APPROVED BY:

*Robert D. Cook*

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