

The State of South Carolina



Office of the Attorney General

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May 13, 1985

Lewis M. Levy, Esquire
General Counsel
South Carolina State Housing Authority
2221 Devine Street, Suite 540
Columbia, South Carolina 29205

Dear Mr. Levy:

By your letter of April 29, 1985, you have referenced a proviso in the Appropriations Act for the current fiscal year (Act No. 512, 1984 Acts and Joint Resolutions) pertaining to the South Carolina State Housing Authority and asked whether the Authority may retain funds for use by the Authority, rather than reimbursing the State of South Carolina for operational costs of the Authority. It is the opinion of this Office that the Authority must reimburse the State for operational expenses to the extent possible, given the criteria in the proviso.

The proviso in question to Section 48 of the 1984-85 Appropriations Act states:

Provided, That the Authority shall annually repay the State for its operational costs to the extent possible, in whole or in part, after the close of each fiscal year from non-tax-generated funds. The amount of repayment shall be determined by Resolution of the Authority's Commissioners based on their analysis of Cash Flow Certificates, Parity Tests, and other Authority program requirements.

An identical proviso has been contained in the appropriation for the State Housing Authority in each annual appropriations act, beginning with fiscal year 1980-81. The statutory construction of this proviso is in question.

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It is the objective of this Office and the courts of this State in construing a statute to ascertain and give effect to the intent of the legislature if at all possible. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). Furthermore, words used in a statute must be given their plain and ordinary meanings unless something within a statute requires a different interpretation. Laird v. Nationwide Insurance Company, 243 S.C. 388, 134 S.E.2d 206 (1964). The use of the term "shall" connotes mandatory compliance with a statute. 2A Sutherland Statutory Construction §57.03. Because the legislature used the term "shall" in the proviso, the plain meaning of the statute would indicate the legislature's intent that the State Housing Authority reimburse the State for operational costs after the close of each fiscal year, taking specified guidelines into account. The reimbursement is to be made to the extent possible, whether in whole or in part, from non-tax-generated funds, before consideration may be given to retaining those funds for the Authority's own use.

While the State of South Carolina compiles no official legislative history, often the unofficial views of legislators are helpful in determining legislative intent. Tallevast v. Kaminski, 146 S.C. 225, 143 S.E. 796 (1928). This Office is advised by a legislator familiar with the proviso that the Authority as initially conceived was to be eventually run without cost to the State. In fact, the Authority itself proposed the repayment so that it would be self-sustaining, as a selling point for its concept of making housing available at low cost to specified segments of the population. The provisos were added to the annual appropriations acts once the process of issuing bonds had begun, after various constitutional hurdles had been overcome and the Authority began generating non-tax revenues. In the fiscal year 1980-81, the first non-tax-generated monies became available to reimburse the state, and the proviso has been included annually since that time. Thus, the interpretation of the proviso by this Office is consistent with apparent legislative intent.

While you have not specifically asked this Office whether the legislature may require a recipient of state funds to reimburse the State, it should be noted that the legislature has absolute control over the State's finances and may direct and control disposition of funds except as the State Constitution may prohibit. 81A C.J.S. States §203; Segura v. Louisiana Architects Selection Board, 353 So.2d 330, writ granted 354 So.2d 1051, rem. 362 So.2d 498 (La.Ct.App. 1977). There are apparently no prohibitions

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within the State Constitution as to requiring a recipient of state funds to reimburse the State; thus, the General Assembly is acting within its power to require the State Housing Authority to repay the State for its operational costs.

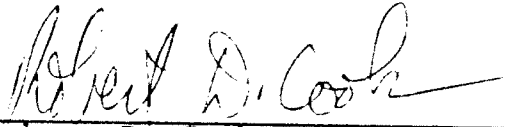
We trust that the foregoing will satisfactorily respond to your inquiry. If you need clarification or additional assistance, please advise this Office.

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

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REVIEWED AND APPROVED BY:



Robert D. Cook
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