

# The State of South Carolina



## Office of the Attorney General

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January 28, 1986

The Honorable Derial L. Ogburn  
Member, House of Representatives  
Post Office Box 311  
Jefferson, South Carolina 29718

Dear Representative Ogburn:

By your letter of January 17, 1986, you have asked who would have authority to approve the expenditure of "C" funds for highway improvements. Approval of such expenditures rests with the legislative delegation pursuant to Section 12-27-400, Code of Laws of South Carolina (1984 Cum. Supp.), as modified by a proviso in Part I, Section 126 of the 1985-86 Appropriation Act, Act No. 201 of 1985 (p. 1590). Presently, such expenditures must be approved by ninety percent of a given delegation.

The constitutionality of Section 12-27-400 has been questioned by an opinion of this Office dated October 24, 1979. However, by another opinion dated July 26, 1984, this Office advised that only a court is empowered to declare a statute unconstitutional, and until such is done, the statute is presumed to be constitutional and should be so treated. As was stated,

A declaratory judgment or legislative clarification would be advisable to determine the constitutionality of the statute or to take corrective legislative measures, as may be necessary. Until such legislative or judicial action is taken, however, it would appear that Section 12-27-400 of the Code should be followed.  
[Emphasis added.]

We continue to adhere to this position.

The Honorable Derial L. Ogburn  
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Copies of the referenced statutes and opinions are enclosed. Please advise if you need additional information or assistance.

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/an

Enclosures

REVIEWED AND APPROVED BY:

*Robert D. Cook*

Robert D. Cook  
Executive Assistant for Opinions