

The State of South Carolina



Office of the Attorney General

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February 25, 1987

The Honorable John G. Felder
Member, House of Representatives
416C Blatt Building
Columbia, South Carolina 29211

The Honorable Patrick B. Harris
Member, House of Representatives
519B Blatt Building
Columbia, South Carolina 29211

Dear Representatives Felder and Harris:

You have asked whether, if the Capital Expenditure Fund is fully funded according to the provisions of Section 11-11-310, Code of Laws of South Carolina (as revised by Part II, Section 47 of Act No. 540 of 1986), and state law is otherwise complied with, a member of the Ways and Means Committee may recommend that whatever money is freed up be spent for items on a priority list (such as higher education, pay raises for state employees, and so forth). For instance, if bonded indebtedness or capital improvements are otherwise covered within the appropriations bill, may the member recommend other uses for monies placed in the Capital Expenditure Fund?

One question which has arisen in this matter is procedural, apparently. Due to the separation of powers doctrine found in Article I, Section 8 of the State Constitution, this Office will not attempt to usurp the role of the Speaker of the House of Representatives or a committee chairperson in ruling on a matter of procedure. By an opinion of this Office dated June 13, 1985, however, this Office opined that

because the General Assembly is empowered, within constitutional limitations, to adopt any act it chooses and further because the

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power to determine procedural rules may be exercised by each house of the Legislature on a continuing basis, one Legislature may not necessarily bind a succeeding Legislature concerning its procedure

A copy of the complete opinion is enclosed for your use.

Other than procedural, the crux of the issue seems to be for what purposes the Capital Expenditure Fund may be expended. Section 11-11-310, as amended by Act 540 of 1986 as noted above, provides:

Revenues in this Capital Expenditure Fund may be appropriated by the General Assembly in separate legislation for the purpose of accelerating the retirement of state bonded indebtedness or for the purpose of avoiding the issuance of bonds for projects that are authorized but not issued.

Two purposes are expressed within the statute: (1) accelerating retirement of state bonded indebtedness and (2) avoiding the issuance of bonds for projects which are authorized but for which bonds have not been issued. Whether these are the only two expenditures for which the Capital Expenditure Fund may be used is not apparent upon the face of the statute.

Appropriating monies is a legislative prerogative. If the Legislature wishes to amend Section 11-11-310 of the Code, to expressly include the procedural aspects in question, to clarify the purposes for which the Fund may be expended, or for any other reason, that is in the exclusive province of the Legislature. As stated in Heslep v. State Highway Department, 171 S.C. 186, 171 S.E. 913 (1933),

[i]t has always been, and is now, the law that the General Assembly may enact any act it desires to pass, if such legislation is not expressly prohibited by the Constitution of this State, or the Constitution of the United States.

Id., 171 S.C. at 193. Likewise, a member of the General Assembly would be free to introduce whatever legislation he wished, constrained only by the state and federal constitutions.

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We would further point out the following with regard to any apparent conflict in an appropriations act and a permanent statute, that

[a]n appropriation act, though generally in duration temporary, has equal force and effect as a permanent statute for the time being. If approved subsequently to such permanent act, and there is irreconcilable conflict, the latter is suspended during the time the appropriation act is of force.

State ex rel. McLeod v. Mills, 256 S.C. 21, 27, 180 S.E.2d 638 (1971).

To summarize, this Office will not attempt to usurp authority of the legislative branch of government by ruling on procedural matters. We further advise that one Legislature has the power to alter rules established by a predecessor Legislature and that an earlier legislative act may be amended by a succeeding Legislature. The General Assembly is limited only by the state and federal constitutions in enacting legislation. If the Legislature desires to amend either expressly or by the appropriation process Section 11-11-310 of the Code, or a member wishes to so introduce legislation, such would be within the legislative prerogative. This Office expresses no opinion as to how any particular monies should or could be appropriated, as that is a matter left to the General Assembly.

Sincerely,

Patricia D. Petway
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Assistant Attorney General

PDP/an

Enclosure

REVIEWED AND APPROVED BY:

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