The State of South Carolina

Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-734-3680

June 12, 1987

The Honorable Larry W. Propes
Deputy Director
South Carolina Court Administration
Post Office Box 50447
Columbia, South Carolina 29250

Re: R153 of 1987 Acts and Joint Resolutions

Dear Larry:

You have asked the opinion of this Office whether S512 of 1987 [hereinafter R153 of 1987] provides retroactive authority for the South Carolina Court Administration to expend monies from the special fund created in § 4, Part I of Act 540 of 1986 [The Appropriations Act] for legal costs and fees incurred in court proceedings for commitment of alcohol and drug addicts pursuant to Chapter 52, Title 44 of the South Carolina Code. We cannot conclude that the General Assembly intended R153 to be applied retroactively.

R153 of 1987 is a joint resolution[1] that provides:

> Section 1. The General Assembly directs the fund appropriated under Section 4 of Part I of Act 540 of 1986, 1986-87 General Appropriations Act, for commitments, admissions, and discharges to mental health facilities also may be expended under the provisions of Chapter 52 of Title 44 of the 1976 Code.
>
> Section 2. This act takes effect upon approval by the Governor.

---

[1] A joint resolution has the same force of law as an act but is a temporary measure. Rule 10.3(c) Rules of the House of Representatives. Since R153 relates to a special fund operational during fiscal year 1986/87, it is appropriately entitled a joint resolution instead of a bill.

As a matter of history, R153 was enacted in response to this Office's opinion dated October 14, 1986 wherein we concluded that there existed no authority to expend the special fund created in Section 4, Part I of Act 540 of 1986 for legal costs and fees in court proceedings for the commitment of alcohol and drug addicts. The legislative intent for the enactment of R153 is clearly to provide that authority.

The rule is well established that a statute may not be applied retroactively in the absence of a specific provision or clear legislative intent.

> In the construction of statutes there is a presumption that statutory enactments are to be considered prospective rather than retroactive in their operation unless there is a specific provision or clear legislative intent to the contrary. Neel v. Shealy, 261 S.C. 266, 199 S.E.2d 542 (1973). No statute will be applied retroactively unless that result is so clearly compelled as to leave no room for reasonable doubt: "...the party who affirms such retroactive operation must show in the statute such evidence of a corresponding intention on the part of the Legislature as shall leave no room for reasonable doubt. It is not necessary that the Court shall be satisfied that the Legislature did not intend a retroactive effect. It is enough, if it is not satisfied that the Legislature did intend such effect." Ex Parte Graham, 47 S.C. Law (13 Rich. Law) 53 at 55, 56 (1864). See also: Pulliam v. Doe, 246 S.C. 106, 142 S.E.2d 861 (1965).

Hyder v. Jones, 271 S.C. 85, 245 S.C.2d 123, 125 (1978). R153 neither contains express language mandating retroactive application, nor does the language of the joint resolution imply a legislative intent to overcome the ordinary presumption of prospective application.

Although there exists a well recognized exception to the ordinary presumption of prospective application relative to remedial or procedural statutes, Merchants Insurance Company v. South Carolina Second Injury, 277 S.C. 604, 291 S.E.2d 737 (1982), R153 is not remedial or procedural as those terms are used in this context. R153 instead provides the substantive authority to expend money for costs incurred in the commitment of alcohol and drug addicts where none existed previously. See, Op.Atty.Gen., 10/14/86; Hyder v. Jones, supra.

The limited probative legislative history also supports the conclusion that R153 should only apply prospectively. The Fiscal

Impact Statement[2] filed with the General Assembly in accordance with Section 2-7-72 that relates to S512 provides:

> Senate Bill 512 provides that the appropriations in Section 4 of Part I of Act 340 [sic] of 1986, the General Appropriations Act [sic] to be used for commitments of Alcohol and Drug Abuse involuntary commitments as well as psychiatric commitments.
>
> Court administration official state [sic] that this could be as much as 25% the cost of regular Mental Health commitments which could total $100,000 annually. However, this joint resolution is only effective from date of passage to June 30, 1987 so this partial year cost would be $25,000. [Emphasis added]

Of course, it is reasonable to assume that the General Assembly would have changed the proposed language of S512 if it had intended to authorize expenditures for costs or services already incurred or provided.

We caution that our conclusion herein does not suggest that the General Assembly could not enact curative legislation to provide for the expenditure of the special fund for legal costs and fees that arose prior to the effective date of R153 provided that the costs or fees were incurred during the current fiscal year, cf. Dunham v. Davis, 229 S.C. 29, 91 S.E.2d 716 (1956), if that is its intent. However, if the Legislature authorizes the expenditure of public funds for expenses previously incurred or services previously rendered its intent must be specific and clear. cf. Hyder v. Jones.

Please call upon us again if we may be of further assistance.

Very truly yours,

Edwin E. Evans
Deputy Attorney General

EEE:jca
REVIEWED AND APPROVED:

Joseph A. Wilson, III
Chief Deputy Attorney General

Robert D. Cook
Executive Assistant, Opinions

---

[2] Section 2-7-72 of the South Carolina Code requires a Fiscal Impact Statement to be affixed to any bill or resolution introduced in the General Assembly that requires the expenditure of funds.