

The State of South Carolina



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Office of the Attorney General

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June 13, 1985

The Honorable Jennings G. McAbee
Member, House of Representatives
333B Blatt Building
Columbia, South Carolina 29211

Dear Representative McAbee:

By your letter of June 5, 1985, you have asked this Office to address the following question:

Can one Legislature bind another concerning its procedure?

Specifically you are referring to Sections 13 and 15 of Act No. 518, 1980 Acts and Joint Resolutions, which sections appear to limit certain fiscal procedural actions of the General Assembly. We would advise that any succeeding General Assembly has the power to alter the provisions of Act No. 518 of 1980; thus, a succeeding Legislature would not be bound by the terms of that Act if it chose to amend the Act.

Section 15 of Act No. 518 has been codified as Section 2-7-100, Code of Laws of South Carolina (1984 Cum. Supp.), and states, "Beginning with the 1981 session of the General Assembly and thereafter, neither House of the General Assembly shall consider the Capitol Improvement Bond Bill which is introduced later than April first." Section 13 added: "State Capitol Improvement Bonds may be authorized by the General Assembly

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during the 1981 legislative session, and thereafter only in odd numbered years." The effect of these provisions on future legislatures is your basic inquiry.

As the Supreme Court stated in Heslep v. State Highway Department, 171 S.C. 186, 171 S.E. 913 (1933),

It 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. ...

171 S.C. at 193. A search of both constitutions reveals no express prohibition preventing the General Assembly from amending Act No. 518 of 1980. Thus, the General Assembly has the authority to amend the Act if it so desires. Should the Act be amended, succeeding Legislatures would no longer be bound by the terms of the Act.

Moreover, Article III, Section 12 of the State Constitution states that "[e]ach house shall ... determine its rules of procedure" House Rule 5.12 governs as to the dates by when legislation must be introduced into the House for consideration by the House; the application of this Rule appears to have been modified somewhat by the terms of Act No. 518 of 1980, though the Act would not constitute a change or amendment to the Rule itself. As indicated by the Supreme Court in State ex rel. Coleman v. Lewis, 181 S.C. 10, 186 S.E. 625 (1936), application of a rule may be affected by means other than amendment of the rule itself; however, each house has the absolute and continuing constitutional right to amend its own rules at any time. The same reasoning used by the court in Lewis would also apply to your inquiry.

In conclusion, it is the opinion of this Office that because the General Assembly is empowered, within constitutional limitations, to adopt any act it chooses and further because the power to determine procedural rules may be exercised by each house of the Legislature on a continuous basis, one Legislature may not necessarily bind a succeeding Legislature concerning its

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procedure, as specified in Sections 13 and 15 of Act No. 518 of 1980.

We hope that we have satisfactorily responded to your inquiry. Please advise if additional assistance or clarification should be necessary.

Sincerely,

Patricia D. Petway

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Assistant Attorney General

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REVIEWED AND APPROVED BY:

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