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The State of South Carolina

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September 3, 1985

The Honorable Derwood L. Aydlette, Jr.
Member, House of Representatives
Post Office Box 12136
Charleston, South Carolina 29412

Dear Representative Aydlette:

You have asked whether the annual State Appropriations bill can be introduced simultaneously in the Senate and House, consistent with Article III, § 15 of the State Constitution. We would advise that case law from other states interpreting constitutional provisions similar to Article III, § 15 indicates that such would be constitutionally permissible. However, we would note that it is the longstanding practice of our General Assembly to initiate appropriations bills in the House of Representatives. Therefore, while we conclude that Article III, § 15 does not prohibit the introduction of the appropriations bill in either house, of course, it remains for the General Assembly as a matter of policy to determine whether this practice should continue.

Article III, § 15 provides in pertinent part:

> Bills for raising revenue shall originate in the House of Representatives but may be altered, amended or rejected in the Senate; all other Bills may originate in either House, and may be amended, altered or rejected by the other.

Our Supreme Court has consistently interpreted this provision to "only appl[y] ... to bills to levy taxes in the strict sense of the word, and not to bills for other purposes, which may incidentally raise revenue." State v. Stanley, 131 S.C. 513, 517, 127 S.E. 574 (1925). See also, State ex rel. Coleman v. Lewis, 181 S.C. 10, 186 S.E. 625 (1936). The opinions of this Office

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are in accord. See, 1964-65 Op. Atty. Gen., No. 1817, p. 66; Op. Atty. Gen., May 21, 1981. For the constitutional provision to be applicable, it is generally recognized that the bill in question must have the

> avowed purpose of increasing the funds for meeting the general governmental needs by a compulsory imposition without giving any direct and immediate equivalent in return for the payment thereof.

71 Am.Jur.2d, State and Local Taxation, § 9.

Moreover, it is acknowledged that the question of origin of a particular bill "is not often litigated." Indeed,

> [t]he general tendency favors narrow construction of what constitutes a revenue bill which must originate in the lower house. There is general agreement for example that the constitutional provision does not apply to bills which serve other primary purposes and only incidentally produce revenue.

1 Sutherland, Statutory Construction, § 9.06. As one authority has observed,

> [i]n most instances, attacks upon legislation on the ground that it originated in the upper legislative body and not in the lower house ... have failed for the reason that the particular legislation was deemed not to be a revenue bill within the meaning of such requirement.

4 A.L.R.2d 973 at 975.

For the foregoing reasons, courts in other jurisdictions have almost uniformly determined that an appropriation measure does not constitute a "revenue bill" within the meaning of constitutional provisions similar to Article III, § 15. Sutherland, supra. As has been written,

> A mere appropriation of public money is not a bill "raising revenue" within the meaning of a constitutional provision requiring such bills to originate in the house, even though it may lead to the

> necessity of taxation in the future, or provide for taxation incidental to its main purpose.

4 A.L.R.2d at 987. The case law is abundant in support of this basic principle. See, Opinion of the Justices, 126 Mass. 557, 567-602 (1879); Opinion of the Justices, 150 A.2d 813 (N.H., 1959); In re Opinion of the Justices, 152 N.E.2d 90 (Mass., 1958); In re Opinion of the Justices, 339 A.2d 721 (N.H., 1975); Millard v. Roberts, 202 U.S. 429, 50 L.Ed. 1090 (1906); Curryer v. Merrill, 25 Minn. 1, 33 Am.Rep. 450 (1878).

As long ago as 1879, the Supreme Court of Massachusetts, in Opinion of the Justices, supra, stated:

> ... the exclusive constitutional privilege of the House of Representatives to originate money bills is limited to bills that transfer money or property from the people to the State and does not include bills that appropriate money from the Treasury ... to particular uses of the Government.

And in Opinion of the Justices, the New Hampshire Supreme Court reasoned that a similar provision to Article III, § 15 refers

> to bills which raise money by direct taxation, and such money bills must originate in the House or Representatives. However, all other bills, even though they carry an appropriation, may originate in either the House of Representatives or the Senate.

150 A.2d at 815. Later, the New Hampshire Supreme Court reaffirmed the above holding in In re Opinion of the Justices, supra, noting that the rule "represent[s] the general rule in the United States." 339 A.2d at 722. Finally, this Office has, in the past, made reference to the applicability of the rule. Op. Atty. Gen., May 15, 1981.

Thus, the foregoing authorities make it clear that an appropriations bill is not normally considered a "revenue bill" within the meaning of the constitutional provision even though the bill may incidentally impose taxes. Courts have generally concluded that the constitutional provision was designed to insure that bills whose primary purpose is to raise taxes must originate in the House, but those whose principal purpose is to appropriate funds may constitutionally originate in either

house. While appropriations measures in South Carolina undoubtedly contain a number of tax provisions, the primary purpose of such bills is to appropriate money, see, e.g. R-232 of 1985, ["... To Make Appropriations To Meet The Ordinary Expenses of Government...."] Most of the taxes raised are pursuant to separate enactments. As our Supreme Court recently stated, "[t]he subject of an appropriations bill is solely to make appropriations to meet the ordinary expenses of state government and to direct the manner in which the funds are expended." Ex Parte: Georgetown County Water and Sewer District v. Jacobs, Op. No. 22255 (March 11, 1985). Accordingly, should our own Court address the question you have raised, based upon the authorities cited above, it could well conclude that such a bill could permissibly originate in either the House or the Senate, particularly if the Appropriations Act contained no revenue raising provisions. 1/

We would further note that, historically, the State Appropriations Bill has originated in the House of Representatives. Whether this is because of custom and policy or because the General Assembly has determined that the bill usually contains sufficient tax measures to invoke Article III, § 15, is not certain. Usually, the General Assembly's interpretation of constitutional provisions involving its own prerogatives is to be given considerable deference. See, Duncan v. Record Pub. Co., 145 S.C. 196, 143 S.E. 31 (1928); Op. Atty. Gen., December 10, 1984. Moreover, Article III, § 12 explicitly mandates that each house shall determine its own procedures. See, Culbertson v. Blatt, 194 S.C. 105, 9 S.E.2d 218 (1940); Op. Atty. Gen., December 10, 1984.

Accordingly, it is our conclusion that Article III, § 15 does not require that appropriations bills originate in the House of Representatives, at least where no revenue raising measures are included therein. However, whether the General Assembly wishes to depart from its longstanding practice that

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1/ It should also be noted that, absent facial irregularities and where approved by both houses and signed by the Governor, an Act cannot be impeached on the basis that it originated in the wrong house in contravention of Article III, § 15. State ex rel Richards v. Moorer, 152 S.C. 455, 150 S.E. 269 (1929).

such bills originate in the House is a matter of policy for the Legislature to determine.

If we can be of further assistance, please let us know. With kindest regards, I remain

Sincerely,

Robert D. Cook
Executive Assistant for Opinions

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