

1983 WL 181739 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 8, 1983

***1 SUBJECT: Sales Tax—Funds Derived From Increased Sales Tax Subject To Spending Limitation.**

Appropriations to be derived from a proposed increase in sales tax which is credited in part to the general fund, to a proposed Local Government Relief Fund and to the general reserve fund are subject to the spending limitation of § 11-33-40, South Carolina Code of Laws, 1976, as amended.

Honorable Richard W. Riley
Governor
State of South Carolina

QUESTION:

Are appropriations subject to the spending limitation of § 11-33-40, South Carolina Code of Laws, 1976, as amended, where such appropriations are to be derived from added taxes that are to be credited in part of the general fund, to the general reserve fund and to a separate account entitled to Local Government Tax Relief Fund?

APPLICABLE LAW:

§§ 11-33-30 and 11-33-40, South Carolina Code of Laws, 1976, as amended.

DISCUSSION:

You have asked whether appropriations are subject to the spending limitation of § 11-33-40, South Carolina Code of Laws, 1976, as amended, when derived from added taxes that are to be credited to the general fund, to the general reserve fund and to a separate account entitled the Local Government Tax Relief Fund. The opinion of this office is that such appropriations are subject to the limitation.

The spending limitation was enacted as Act No. 517, Acts of 1980, Part II, Section 12D, and is codified as § 11-33-40, South Carolina Code of Laws, 1976, as amended. This section limits state expenditures as follows:

‘The limitation on state expenditures in any fiscal year as determined by the Budget and Control Board shall be an amount equal to the total of state expenditures for the previous fiscal year increased by the average percentage rate of growth in state personal income for the previous three years.’

Section 11-33-30 defines ‘state expenditures’ as:

‘* * * total state general fund appropriations and the highway fund appropriations less federal funds as contained in the annual state general appropriations act and acts amendatory thereto. * * *.’

Section 11-33-30 further identifies the revenue sources which constitute the highway fund. No revenue sources are listed that constitute the state's general fund nor is the term general fund defined. It is thus necessary to determine if the funds to be appropriated fall within the term 'general fund' as used in the statute.

In construing a statute, it is settled that the cardinal rule of statutory interpretation is to ascertain and effectuate legislative intent. [Bankers Trust of South Carolina v. Bruce](#), 275 S. C. 35, 267 S. E. 2d 424 (1980). The statute must be read and construed in light of the evil which it seeks to remedy and in light of conditions obtaining at time of enactment. [Judson Mills v. South Carolina Unemployment Compensation Commission](#), 204 S. C. 37, 38 S. E. 2d 535 (1942).

The obvious purpose of Act No. 517, Acts of 1980, was to control the growth of state government. Such was to be accomplished by controlling state taxes, expenditures and borrowing. The proposed legislation increases the sales and use tax from four percent to five percent. To conclude that state revenue from the increase is not subject to the spending limitation would conflict with the purpose for which Act No. 517 was enacted. An increase in taxes and expenditures was the thing the Act sought to control. It should be further noted that at the time the Act was adopted, all state revenue was placed into the fund and specifically appropriated therefrom by the General Assembly. Such was the case notwithstanding earlier legislation that earmarked certain of such revenues to designated purposes.

*2 The tax to be levied is a state tax and the appropriation thereof is a state expenditure. The fact that some of the revenue is to be used for school districts, counties and municipalities does not negate the fact that the tax is levied and appropriated by the state. As such, the intent of Act No. 517 to control state taxes and appropriations is satisfied by including the taxes to be levied and appropriated in the spending limitation.

It should be further noted that if the proposed taxes are levied and appropriated by act of the General Assembly, the enactment would have the effect of suspending, amending or repealing the 1980 Act.

Finally, the history of legislation may be reviewed to determine the meaning of a statute. [Palmetto Lumber Co. v. Southern Railway](#), 154 S. C. 129, 151 S. E. 279 (1929). In 1981, § 11-33-30 was amended by Act No. 177, Section 15, to include highway funds within the definition of state expenditures. An attempt was then made to require the Department of Highways and Public Transportation to submit a line item budget and to place all funds currently received as highway funds into the general fund. See House Journal, Volume 2, page 3700. This amendment was defeated. The amendment did, however, specifically subject highway funds to the spending limitation. See House Journal, Volume 2, page 3747. Such history supports the conclusion that the General Assembly intended to gain control of all funds derived from state taxation.

CONCLUSION:

Appropriations to be derived from a proposed increase in sales tax which is credited in part to the general fund, to a proposed Local Government Relief Fund and to the general reserve fund are subject to the spending limitation of § 11-33-40, South Carolina Code of Laws, 1976, as amended.

T. Travis Medlock
Attorney General of South Carolina

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