

1984 WL 249698 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 23, 1984

***1 RE: Opinion Request No. 903**

Charles A. Shaw
Director
S.C. Dairy Commission
1026 Sumter Street
Columbia, South Carolina 29201

Dear Mr. Shaw:

You have asked for an opinion concerning the proper procedure for depositing funds generated by the dairy assessment. Such funds are collected from distributors licensed in South Carolina pursuant to [§ 39-33-40, CODE OF LAWS OF SOUTH CAROLINA \(1976\)](#). The funds are to be used by the State for the recoupment of expenses incurred by the Dairy Commission in administering the Milk and Milk Products Marketing Act, supra.

A joint legislative subcommittee studying accounting procedures for revenue generated by state agencies has recommended that the dairy assessment funds be deposited directly into the General Fund. In the past, these funds have been deposited by the State Treasurer in a subfund entitled 'Dairy Commission Revenue.' Your question is whether the deletion of the subfund and the deposit of the assessment receipts into the General Fund complies with state law.

The answer to your question is found in [§ 39-33-40, supra](#). That section states, in pertinent part:

' . . . All receipts from assessments collected under this article shall be paid by the Commission to the State Treasurer and shall be placed in a general fund to the credit of an account to be known as the 'Dairy Commission Account' . . . '

Although the statute uses the words 'general fund' the context makes it clear that the General Assembly did not intend to refer to the General Fund. Instead, the statute clearly mandates the establishment of a subfund into which the dairy assessment receipts are to be deposited. Such mandate is indicated by the use of the word 'shall' in the statute. Sutherland, Statutory Construction, 4th Edition, Volume 2A, § 57.03.

Where, as here, a statute is clear and unambiguous upon its face it must be applied according to its literal meaning. [Guery v. Kinsler](#), 3 S.C. 423 (1872); [Weston v. Board of Commissioners of Police Insurance and Annuity Fund](#), 13 S.E.2d 600, 196 S.C. 491 (1941). Applying the literal meaning in this instance leaves no doubt that the General Assembly intended that the dairy assessment proceeds be deposited into a special subfund. It is, therefore, the opinion of this office that the dairy assessment proceeds must be deposited into a special account in compliance with [§ 39-33-40, supra](#). This accounting procedure may not be modified without a statutory amendment.

I trust that this has answered your question sufficiently. If not, feel free to contact us.

Sincerely,

Clifford O. Koon, Jr.
Assistant Attorney General

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