

1983 S.C. Op. Atty. Gen. 111 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-70, 1983 WL 142739

Office of the Attorney General

State of South Carolina

Opinion No. 83-70

September 15, 1983

*1 Honorable Earle E. Morris, Jr.
Comptroller General
Wade Hampton Office Building
Columbia, South Carolina 29201

Dear Mr. Morris:

You have requested an opinion as to the proper disposition of \$9,921,197.29 which remained as an Unreserved General Fund Balance at the end of FY 82-83. Specifically, the question is whether any obligation exists to transfer those funds to the General Reserve Fund.

The General Reserve Fund was created by [Article III, § 36 of the South Carolina Constitution](#). The Fund is required to consist of an amount equal to 5% of the general fund revenue of the latest completed fiscal year. Its purpose is to cover year-end operating deficits. When such a deficit occurs, funds from the Reserve Fund shall be used to cover the deficit.

The procedure for restoring the Fund in the years following the deficit is set forth in the third paragraph of [Article III, § 36](#). It is there provided that the Fund shall be restored to the level of 5% of general fund revenues within 3 years. During the first of the three years, not less than one percent of the general fund revenue shall be restored, and not less than two percent in each of the next two succeeding fiscal years.

The General Assembly, through the enactment of § 11-11-120, 1976 Code of Laws of South Carolina, has required more than the aforementioned constitutional provision. § 11-11-120 provides in part as follows:

Funds accumulating in excess of the annual operating expenditures shall be transferred to the General Fund Reserve and such transfer shall continue to be made in succeeding fiscal years until the accumulated total in this reserve reaches an amount equal to five percent (5%) of the General Fund Revenue of the latest completed fiscal year.

This provision makes it clear that until the five percent amount is reached, all surpluses must go to the Reserve Fund.

The statute provides that restorations of the Fund following deficits shall occur in the same fashion as quoted above with reference to the initial creation of the Fund: amounts withdrawn to cover deficits 'shall be restored to the Reserve Fund out of future revenues and surpluses as herein provided until the five percent (5%) maximum is again reached and actually maintained.' § 11-11-120 concludes by providing that once the fund is restored to the 5% level, surplus funds may then be appropriated by the General Assembly for the purposes set forth in the statute.

From the foregoing, it is apparent that the Constitution requires only that annual increments of one percent or two percent be applied to restore the Reserve Fund after a deficit. However, § 11-11-120 clearly requires all surpluses, even those in excess of one or two percent, to be applied to the Reserve Fund until the five percent figure is reached. At present, the Fund should contain some \$98,000,000 and without the \$9.9 million here in question will contain only \$48.1 million at the end of the present fiscal year. Since the five percent figure has not been reached, it is the opinion of this Office that § 11-11-120 requires the \$9.9 million surplus to be applied to the Reserve Fund.

Sincerely yours,

*2 T. Travis Medlock
Attorney General

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