

1982 WL 189164 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 10, 1982

*1 W. James Betz

Director

South Carolina Public Railways Commission

Post Office Box 279

Charleston, South Carolina 29402

Dear Mr. Betz:

You have asked that this Office provide an opinion to you and to the State Auditor on questions raised by him in the draft Auditor's Management letter dated March 11, 1981, concerning which he recommended an opinion be sought.

The first question concerns payments by the Public Railways Commission for travel and subsistence of members and employees at the actual cost thereof, which in some instances exceeds the limits set each year in the general appropriation act for travel and subsistence of State employees and commission members. Because these funds are from operating revenue of the Commission, and are not appropriated funds, such payments were proper under the Commission's general powers, [Code Section 58-19-30](#), at least from 1970 (when the Commission was organized) to 1978. In the 1978 Appropriations Act and subsequent years the provision concerning payment of travel and subsistence was amended to provide:

Section 135. Travel and subsistence expenses, whether paid from State appropriated, Federal or other funds, shall be allowed in accordance with the following provisions: * * * [Amendment underlined.]

In my opinion this provision might be overridden by [Code Section 58-19-180](#), Code of Laws 1976, as amended. That section grants to the Commission, as required by Title 49, U. S. Code Section 10102(17), the complete authority to 'disburse and account for assets and revenues received by it from whatever source.' If there was a conflict, for example, between State and Federal law concerning railroad operation or equipment the Commission would be bound to observe the Federal law. Whether this rule would apply to such matters as travel and subsistence, on which there is no controlling ICC rule except 'reasonableness', is not nearly so clear. Section 131 of the 1981 Appropriations Act also repeats the requirement that travel and other limitations in the act apply to all funds, whether or not appropriated.

In our opinion the only clear-cut solution is to add a provision in the Appropriations Act exempting from the limitations on reimbursements for travel and subsistence those agencies which receive no public fund appropriations or authorizations, but operate entirely on earned income. This Office has recommended such a proviso to the State Auditor.

The second question is more simple of resolution. Expenditures for social club memberships or other personal perquisites are prohibited by Section 133 of the 1981 Appropriations Act, and prior acts. However, an agency may pay dues and seminar costs to professional or business organizations for the agency as a whole, or for designated employees where it is deemed necessary and appropriate to the proper performance of the agency's duties and purposes. The prohibition is against personal perquisites, not against paying expenses necessary for the proper performance of duties.

*2 Finally, the S. C. Public Railways Commission is specifically exempted from requirements of the Consolidated Procurement Code, See [Code Section 11-35-710](#), Act No. 148 of 1981; and the Auditor's Management letter does not indicate any loss to the Commission resulting from any prior non-compliance with procurement regulations.

We trust these comments are of assistance to the Commission and the State Auditor in resolving these questions.

Sincerely,

Frank K. Sloan
Deputy Attorney General

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