

1981 WL 157823 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 18, 1981

*1 Honorable Earle E. Morris, Jr.
Comptroller General of S. C.
320 Wade Hampton Office Building
Post Office Box 11228
Columbia, South Carolina 29211

Dear Mr. Morris:

At the request of Mr. William T. Putnam, Executive Director of the State Budget and Control Board, this letter will reply to your letter of June 4, 1981, addressed to Governor Riley, concerning the question of emergency loans to counties and municipalities to finance emergency and recovery operations from emergencies such as enemy attack, storm, earthquake, riot, etc. See, [§ 25-1-460, Code of Laws, 1976](#), as amended, which provides in pertinent part:

When the General Assembly is not in session and emergency funds are required by counties or municipalities, the State Budget and Control Board may authorize emergency loans for emergency and recovery operations to counties and municipalities not to exceed one and one-half million dollars to any single county or municipality from the reserve fund of the state treasury paid from that fund from any monies therein not appropriated for other purposes.

This Act was approved July 30, 1979.

New [Section 36 of Article III, South Carolina Constitution](#) pertaining to the General Reserve Fund became effective March 28, 1979. That Section establishes the general reserve fund, provides that it shall be used only to cover any year-end deficit in the operating budget of the State except:

Provided, that upon the approval of two-thirds of the membership of each house the reserve fund, or any portion thereof, may be appropriated by act of the General Assembly for purposes other than such deficit or priority purposes.

The constitutional provision allows no other means for appropriations from the reserve fund; nor does it permit delegation of such appropriating authority to any other body, such as the Budget and Control Board.

Therefore, it is the opinion of this Office that [Code § 25-1-460](#), providing for emergency loans from the reserve fund, is in conflict with [§ 36, Article III, of the Constitution](#) and is, therefore apparently invalid. Of course, all Acts of the General Assembly are presumed valid unless determined to be invalid by final decision of the courts, which may be pursued under the [Uniform Declaratory Judgment Act](#), §§ 15-53-10, *et seq.*, Code of Laws, 1976, as amended.

Sincerely,

Frank K. Sloan
Deputy Attorney General

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