

1981 WL 157966 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 16, 1981

\*1 Edgar A. Vaughn, Jr.  
State Auditor  
207 Wade Hampton Office Building  
Post Office Box 11333  
Columbia, South Carolina 29211

Dear Mr. Vaughn:

You have requested an opinion from this Office regarding the provisions of Act IV, Section 36, of the South Carolina Constitution with reference to the reserve fund.

Anticipating the possibility that a small surplus may be realized in fiscal year 81-82, you have specifically asked whether any such surplus would be automatically restored to the reserve fund to make up any amount applied at the end of fiscal year 80-81 to cover the year-end operating deficit for that year. In our opinion any such surplus for fiscal year 81-82 would be automatically restored to the reserve fund. The language of the first proviso to the third paragraph states that:

\* \* \* not less than one percent of the general fund revenue of the latest completed fiscal year shall be restored to the reserve fund the first fiscal year following the deficit \* \* \*.

As you will note from the attached opinion of the Attorney General dated May 18, 1981, this provision of the Constitution is self-executing and requires no legislative action. However, even if implementing legislation were required, it is provided by Section 11-11-120 of the Code, which states that amounts applied to cover deficits in prior years ‘\* \* \* shall be restored to the reserve fund out of future revenues and surpluses \* \* \*’.

You have further inquired whether such amount restored to the reserve fund would properly be credited to that percentage which the Constitution requires shall be placed in the reserve fund for fiscal year 82-83. For example, if the one percent deposit to the reserve fund is \$10,000,000 for the fiscal year, and there is an available surplus of \$5,000,000 from the prior fiscal year, which surplus must be automatically restored to the reserve, would the amount necessary to meet the constitutional mandate be an additional \$5,000,000? In our opinion the constitutional mandate would be met by requiring an additional \$5,000,000, for the reason that the first \$5,000,000 has already been automatically restored from surplus.

The further question has been raised whether any such surplus could be appropriated for other purposes by the General Assembly. In our opinion it could not, because both the Constitution and the statute required that surpluses be automatically restored to replace amounts used to cover operating deficits, and because these funds are reserve funds that could be appropriated for other purposes only upon approval of # of the membership of each House, as stated in the final proviso to Art. IV, Section 36. Sincerely,

Frank K. Sloan  
Deputy Attorney General

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