

1981 WL 157968 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 17, 1981

***1 Re: Opinion Request of September 10, 1981; Agriculture, Public Funds**

Mr. G. Bryan Patrick, Jr.
Commissioner
S. C. Department of Agriculture
Post Office Box 11280
Columbia, South Carolina 29211

Dear Commissioner Patrick:

You have asked whether your Department may retain funds received by it in conjunction with a seed testing program conducted pursuant to [Section 46-21-340, Code of Laws of South Carolina \(1976\)](#). Specifically, you have inquired as to using those funds to defray the cost of part-time or temporary employees in your Department's seed laboratory.

In 1978 the General Assembly took steps to tighten controls on non-appropriated revenue by the enactment of Act 651, Acts and Joint Resolutions. The relevant portions of that act forbids agencies and institutions of state government from receiving or expending funds without the prior approval of the Budget and Control Board and the Joint Appropriations Review Committee. This Act was amended by Act 199, Section 6, Acts and Joint Resolutions of 1979, to delete reference to the receipt of funds, thereby leaving the prohibition only upon expenditures.

Based upon our interpretation of the above-cited Acts, it is the opinion of this office that the funds described must be remitted to the general fund unless their retention and use to defray the cost of temporary employees in the seed laboratory is approved by the Budget and Control Board and the Joint Appropriations Review Committee. If the request for retention and use of the funds is made at a time when the General Assembly is not in session, the approval of the Budget and Control Board alone would be sufficient. See Section 5, Act 651.

I trust that this has fully answered your question. If not, please feel free to call.

With kind regards, I am
Very truly yours,

Clifford O. Koon, Jr.
Assistant Attorney General

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