1981 WL 157975 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
September 21, 1981

***1** Honorable Richard W. Riley
Governor of South Carolina
Honorable David F. McInnis
Chairman, Joint Appropriations Review Committee

Gentlemen:
In response to your request, this Office has reviewed the provisions of Act 651 of 1978, as amended to date, with reference to the authority vested in the Governor and in the Joint Appropriatic Review Committee concerning proposals for the expenditure of federal funds, and for federal fund allocations, as well as the designation of a single state agency to make federal grant applications.

Act 651 of 1978, as amended, provides in pertinent part:
Section 4. With the exception of appropriations from the general fund and those provided for in Sections 7 through 9 of this act, no agency or institution of state government shall receive and expend any funds without prior approval of the Governor and the concurrence in such approval by the Joint Appropriations Review Committee. In determining their position with respect to any proposed receipt or expenditure, the Governor and the committee shall consider, among other things, the public benefit to be derived from the program of service and the impact of the proposal on the future finances of state government.

Proposals for the expenditure of federal funds shall originate with the agency or institution designated by the Governor. All requests for federal fund allocations shall be furnished to the committee by the Governor with his recommendations. Within a reasonable time, a statement of concurrence or non-concurrence will be furnished by the committee.

The Governor shall also submit his recommendations to the Budget and Control Board for its review * * *.

Section 5. During the fiscal year for which the funds are authorized, the Governor shall submit to the committee his recommendations for:
(1) Any changes or proposed changes in federal program structure which would affect state agency programs and budgets;

(2) Any changes or proposed changes in the funding of such programs including, but not limited to, changes in funding levels, consolidations, distribution and allocations * * *.

Section 6. When reviewing federal grant applications, the Governor shall determine the requirement or desirability for a single state agency designation. If the designation is found to be desirable or required, the Governor with the concurrence of the committee, shall make the designation.

To avoid extensive recital of the various Federal acts and regulations which have been adopted over the years, it may be said briefly that terms such as ‘allotments', ‘project proposals', ‘planning grants', ‘grant applications', ‘funding allocations', ‘single agency designations', ‘block grants', and ‘categorical grants' have acquired very specific meanings in federally-funded programs; but Act 651, as amended, contains no definitions, omits reference to many of those terms, and uses the others interchangeably. Viz: ‘Proposals for expenditure of federal funds' (Sec. 4, para. 2) and ‘federal grant applications' (Sec. 6).

***2** The specific question at hand is the interpretation of the apparent conflict between the provision of Act 651, Section 4: 'Proposals for the expenditure of federal funds shall originate with the agency or institution designated by the Governor'; and the provision of Sec. 6 requiring concurrence of the Committee in 'single state agency designation' by the Governor. The immediate problem is whether designations by the Governor of agencies to handle administration of several pending 'block grants', which would come to the State under the federal Omnibus Budget Reconciliation Act of 1981, (most of which designations must be made prior to October 1, 1981), require the concurrence of the Committee under Act 651. It is the opinion of this Office that such designations do require the concurrence of the Committee.

Except in those cases where the underlying federal statute itself (e.g., Title V of the Social Security Act, which designates the State's Public Health Agency to administer maternal and child health grants), designates the State agency which will administer a grant, the designation is left to the State. Therefore, State law determines the designation process. The facts that designation of the administering or planning agency for a grant has in the past been a function of the Governor, and that the chief executive officer of the State is the certifying authority for the State for most of the grants under the Reconciliation Act of 1981, and under related federal statutes as to some particular grants, are no longer controlling as to how designations shall be made.

Following the standard rules of statutory construction, Act 651, as amended, must be read as a whole to derive its intent. The act, as so read, makes clear the legislative intent that all proposals, requests for federal fund allocations, grant applications, and agency designations require the review and concurrence of the Committee. Any doubt as to the intent of the 'designation' language of Sec. 4 is eliminated by the express provisions of Sec. 6, requiring Committee concurrence in 'single state agency designation.' It may be argued that the designation referred to in Sec. 4 is a designation for proposals only, and is different than the designation referred to in Sec. 6 for grant applications, but such an interpretation must be derived from sources outside the language of the Act itself. Again, attention is called to the use of more precise language in the federal statutes and regulations.

Assuming, as we must, that Act 651, as amended, is constitutional unless otherwise decided by the courts, the opinion of this Office is that designations of agencies to administer or make proposals for federal grants, as well as applications, allocations, and other State actions involving federal grants 'which would affect state agency programs and budgets,' (Sec. 5) require the concurrence of the Committee.

Sincerely,

Frank K. Sloan
Deputy Attorney General

1981 WL 157975 (S.C.A.G.)

End of Document