

1981 WL 158076 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 17, 1981

\*1 The Honorable Richard W. Riley  
Governor  
State of South Carolina  
The State House  
Columbia, South Carolina

Dear Governor Riley:

You have requested the opinion of this Office interpreting the provisions of Act 651, of 1978, as amended by Act 178 of 1981 (General Appropriations Act of 1981), Part II, Section 18, and particularly Section 18B. Your question is whether the provisions of that Section apply to receipt or expenditure of unappropriated funds which an agency or institution might acquire by levying certain surcharges. You advise that the proposed surcharges would make available to the agency or institution additional operating funds to offset, in part, the reduction of state appropriations ordered recently by the Budget and Control Board.

It is the opinion of this Office that receipt and expenditure of such previously unappropriated funds would require prior approval of the Governor and the concurrence of the Joint Appropriations Review Committee.

Act 651 of 1978, as amended, provides, in pertinent part (Section 18B, Part II, Act 178 of 1981):

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 or service and the impact of the proposal on the future finances of state government. [Emphasis added.]

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

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In our opinion the Act is clear and unambiguous. The proposed surcharges have not been previously appropriated by the General Assembly. They would constitute 'new' or additional funds; and their receipt and expenditure would require prior approval of the Governor and concurrence of the Joint Appropriations Review Committee. The exceptions in Sections 7 through 9 of the Act, as amended, do not apply to these funds.

It is unclear whether 'review' by the Budget and Control Board applies to your recommendation as to receipt and expenditure of unappropriated funds other than federal funds; however, it is our opinion that the insertion of that requirement as a separate paragraph of amended Section 4, indicates the legislative intent that the Board review all proposals covered by the Section, although the Board is given no power of concurrence or nonconcurrence.

Sincerely,

Frank K. Sloan  
Deputy Attorney General

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