

1980 S.C. Op. Atty. Gen. 78 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-40, 1980 WL 104096

Office of the Attorney General

State of South Carolina

Opinion No. 80-40

April 17, 1980

***1** Inclusion in the Appropriations Bill of a provision to repeal the statutes establishing the Court of Appeals is not germane to the subject of the General Appropriations Bill and therefore in violation of Article III, Section 17.

The Honorable Rex L. Carter
Speaker
House of Representatives
The State House
Columbia, South Carolina 29211

Dear Mr. Speaker:

You have requested my opinion on the following matter as set forth in your letter to me of April 10, 1980:

“The Senate has amended the House version of the Appropriations Bill in the Permanent Provisions Section to repeal the Court of Appeals which we established last year. A number of questions have been raised concerning the constitutionality of attaching such a provision to the Appropriations Bill. [Article 3, Section 17 of the South Carolina Constitution](#) has been one of the provisions given to me which indicates that there may be some constitutional problems with repealing the court via this method.”

The action of the Senate is set forth in the Journal of the Senate No. 53, Tuesday, April 8, 1980, at page 10. The Senate, on that date, adopted, as part of the Permanent Provisions of the Appropriations Act, an amendment which would have the effect of repealing Chapter 8, Title 14 of the 1976 Code of Laws, which constitutes the codification of the statutes relating to the Court of Appeals.

[Article III, Section 17 of the Constitution](#) is short and concise:

“Every act or resolution having the force of law shall relate to but one subject, and that shall be expressed in the title.”

The purpose of this provision is to prevent the insertion of matters not germane to the general subject. The inclusion of matters in a General Appropriations Act must therefore be limited to those which are reasonably and inherently related to the raising and expenditure of tax monies. The application of this principle was most recently considered by the Supreme Court of this State in *Hercules, Inc. v. South Carolina Tax Commission*, filed January 9, 1980, in which the Court held that a statute which acted to suspend under defined circumstances a statute of limitations which would otherwise bar tax assessments by the defendant was properly included as a Permanent Provision of the General Appropriations Act, in that such a statute was “reasonably and inherently related to the collection of tax revenues.” It was therefore held to be germane to the purpose of the Appropriations Act.

In other significant cases it has been held that the following statutory provisions were properly included in an Appropriations Act: the authorization for the construction of a Highway Department building which would provide space for the operation of a cafeteria to serve the needs of State employees and officials; a provision for a program of construction of school buildings financed by the issuance of bonds and the pledge of sales tax revenues for the payment thereof; a provision authorizing the issuance of certificates of indebtedness, the proceeds of which would be used for the construction of buildings to house the mentally ill and to impose an additional tax on alcoholic beverages to effectuate such objective; and a provision for the issuance of bonds to defray the cost of building bridges in a county and the levy of a tax for the payment of such bonds.

*2 The title to the Appropriations Bill is extensive, but reading it in the light of the provisions of [Article III, Section 17](#), its one subject can appropriately be considered as “to make appropriations to meet the ordinary expenses of the State government —(and to) further provide for the operation of the State government during the fiscal year.” No monies were appropriated for the support of the Court of Appeals in the Appropriations Bill as submitted to the Senate by the House of Representatives and the action of the Senate in effectuating the repeal of the Court of Appeals does not have the effect of changing the total expenditures currently provided. It does, however, should it become law, obviate the necessity of any funding for the Court now or in the future. The question presented is really whether this topic in the body of the bill is kindred in nature and has a legitimate and natural association with the subject of the title, or, as stated in *Hercules*, whether it is “reasonably and inherently related to the collection of tax revenues.”

In my opinion, the relationship is extremely tenuous so that I do not consider that it is germane to the subject of the Appropriations Bill. I recognize, however, that there appear to be few, if any, decisions by the Supreme Court of this State which have struck down as non-germane any questioned provision sought to be included in an act, although some cases have invalidated provisions which were determined to be not responsive to the title to an act. I must therefore point out that the course of decisions has generally been to uphold any provision that is questioned as being not germane to the subject of an act.

The decision of the Court, in its latest consideration of the application of [Article III, Section 17](#), is clearly distinguishable and is especially valuable because it establishes clearly two basic requirements that are imposed by the constitutional sections: an act must first relate to but one subject, with the topics in the body of the act being kindred in nature and having a legitimate and natural association with the subject of the title, and the title to the act must also convey reasonable notice of the subject matter to the Legislature and to the public. The latter requirement may be assumed to have been met by virtue of the amending process required by the terms of the Senate action; the matter of germaneness is one which depends upon consideration of the facts presented.

In my opinion, the action of the Senate in repealing provisions of law relating to the Appellate Court are not “reasonably and inherently related to the raising and expenditure of tax monies”, which is the basic subject of the Appropriations Bill.

I must therefore state that I have some reservation regarding the conclusions expressed herein, but they are reached after careful consideration of the holdings of the Supreme Court of this State in a number of cases. Another case involving the issue of the application of [Article III, Section 17](#), is scheduled to be heard by the Supreme Court during its May, 1980, term, and it is possible that a more definitive view can be expressed following the rendition of the decision of the Court in that case.

*3 [Article III, Section 17, S.C.Constitution](#) H.3881, General Appropriations Bill, 1978–79

[Caldwell v. McMillan](#), 225 S.C. 150, 77 S.E.2d 798 (1953)

[Colonial Life & A. Ins. Co. v. S.C. Tax Comm.](#), 233 S.C. 129, 103 S.E.2d 908 (1958)

[Crouch v. Benet](#), 198 S.C. 185, 17 S.E.2d 320 (1941)

[DeLoach v. Scheper](#), 188 S.C. 21, 198 S.E. 409 (1938)

[State ex rel. Roddey v. Byrnes](#), 219 S.C. 485, 66 S.E.2d 33 (1951)

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