

1980 S.C. Op. Atty. Gen. 81 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-41, 1980 WL 81924

Office of the Attorney General

State of South Carolina

Opinion No. 80-41

April 23, 1980

*1 The Honorable Nancy Stevenson
Lieutenant Governor
The State House
Columbia, South Carolina 29202

Dear Lt. Gov. Stevenson:

Thank you for your letter of April 21, 1980, expressing your concern about the opinion which I issued on April 17, 1980, with respect to the repeal of the provisions of law relating to the Court of Appeals in the General Appropriations Act for the ensuing year.

I am enclosing herewith a copy of the opinion, which may serve to allay your fears. Some of the more significant decisions, including the latest, are appended to the opinion. The case considered by me to be applicable to the question presented by you is [Buchanan v. State Treasurer](#), 68 S.C. 411. Of interest also are the cases of [Brooks v. Jones](#), 80 S.C. 443; [Grimball v. Beattie, Comptroller General](#), 174 S.C. 422, 177 S.E. 663; [Brown v. Town of Patrick](#), 202 S.C. 236, 24 S.E.2d 365; and [McLeod v. Mills](#), 180 S.E.2d 638.

The Court of Appeals is not a constitutionally created court and this is of prime significance in considering the problem. The holding of the Court in [Buchanan](#) is, therefore, of considerable significance, although a constitutional office was involved in that case. The issue concerned the payment of a reduced salary to a circuit judge, which was the precise situation faced by the Court in [Grimball](#), although on different factual backgrounds. Mandamus was sought in that case to compel the payment of a higher salary, and the petition for the writ of mandamus was denied by the Supreme Court. The Court stated:

‘—as we understand, it is conceded that the Court can require money to be paid from the State treasury only when it has been appropriated by the Constitution or a statute.

‘We cannot escape the conclusion that the issuance of the writ under the circumstances would be an effort on the part of the judicial department of the government to coerce the legislative department.’

In [Buchanan](#), the Court pointed out a significant difference which exists in the circumstances presented by your question: ‘—our Constitution of 1868 left the amount of salary to be fixed by the General Assembly and there was, therefore, no constitutional appropriation for any particular sum to be paid.’

In this instance, there is neither an appropriation of any money (by the terms of the Constitution, authority to withdraw monies from the State treasury being granted only pursuant to an appropriation made by law) nor any constitutional fixation of the establishment of the Court; instead, it rests entirely upon statutory grounds. [Brooks](#) and [Buchanan](#) were later referred to and upheld by the decision of the Supreme Court in [McLeod v. Mills](#).

I feel that your apprehensions are unjustified and, in my opinion, the circumstances referred to by you are not likely to occur. Very truly yours,

Daniel R. McLeod
Attorney General

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