

1980 S.C. Op. Atty. Gen. 134 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-84, 1980 WL 81966

Office of the Attorney General

State of South Carolina

Opinion No. 80-84

August 4, 1980

***1 Subject: Public Funds, Public Transportation**

In the absence of an appropriation by the General Assembly, gasoline tax revenues and motor vehicle license fees may not be used to finance research programs and pilot projects concerning the conveyance of human passengers by bus, van or any other ground surface vehicle which is provided to the general public, or selected groups thereof on a regular and continuing basis.

TO: Paul W. Cobb
Chief Commissioner
South Carolina Department of Highways and
Public Transportation

QUESTION:

Whether the South Carolina Department of Highways and Public Transportation may spend gas tax revenues and motor vehicle license fees for public transportation purposes?

AUTHORITIES:

Constitution of South Carolina
Article X § 8

Article IV § 21

Code of Laws of South Carolina
§ 12-27-380-400 (Cum. Supp. 1979)

§ 12-29-440 (1976)

§ 12-31-500 (1976)

§ 57-1-10 (Cum. Supp. 1979)

§ 57-3-10 (Cum. Supp. 1979)

§ 57-3-20 (Cum. Supp. 1979)

§ 57-3-500 (1976)

§ 57-3-610 (Cum. Supp. 1979)

§ 57-3-760 (Cum. Supp. 1979)

§ 57-3-1010 et seq. (Cum. Supp. 1979)

§ 67-5-850 (1976)

§ 57-5-1870 (1976)

§ 57-11-20 (1976)

§ 57-11-40 (1976)

§ 57-11-50 (1976)

Act No. 82, 60 Acts and Joint Resolutions 140 (1977)

Act No. 586, 60 Acts and Joint Resolutions 1713, 1719 (1978)

Act No. 632, 60 Acts and Joint Resolutions 1813, 1822, (1978)

Act No. 644, 60 Acts and Joint Resolutions, 1872, 2163, 2192, 2239 (1978)

Act No. 194, 61 Acts and Joint Resolutions 446, 492 (1979)

Act No. 199, 61 Acts and Joint Resolutions 524, 822, 894, (1979)

Act No. 506, 61 Acts and Joint Resolutions 1480, (1980)

Act No. 519, 1979-80 Supplemental Appropriations Act § 1, Item 97 (1980)

Act No. 517, 1980-81 General Appropriation Act §§ 116, 156A Item 21, 157 (1980)

South Carolina House Journal 2480, 2687 (1980)

House, Ways and Means Memorandum to Members, RT: GBB Amendment No. 6 of April 16, 1980

DISCUSSION:

In 1977 the General Assembly passed an act renaming the State Highway Department the South Carolina Department of Highways and Public Transportation and adding to the Department's responsibilities several duties related to public transportation. 60 Acts and Joint Resolutions 140 (Act No. 82) 1977; [Code of Laws of South Carolina §§ 57-1-10, 57-3-10, 57-3-20, 57-3-610, 57-3-760, 57-3-1010 et seq. \(Cum Supp. 1979\)](#). The Act defined public transportation as 'every conveyance of human passengers by bus, van or any other ground surface vehicle which is provided to the general public, or selected groups thereof on a regular and continuing basis.' [Code of Laws of South Carolina § 57-1-10 \(Cum Supp. 1979\)](#). The Act empowered the Department to:

(4) Initiate and conduct research programs and pilot projects to further research and development and promote training of personnel in the fields of . . . public transportation.

*2 (5) Cooperate with the federal government . . . in the development of improved public transportation service, facilities, equipment, techniques and methods and in planning and research in connection therewith.

(6) Instruct, assist and cooperate with the agencies, departments and bodies politic and legally constituted agencies of the State in . . . public transportation matters when requested to do so . . .

(7) Carry out . . . public transportation safety programs. [Code of Laws of South Carolina § 57–3–610 \(Cum Supp. 1979\)](#).

By that same piece of legislation the South Carolina Interagency Council on Public Transportation was created as a part of the South Carolina Department of Highways and Public Transportation. The Council was directed to give advice, and make recommendations to the Department and the General Assembly on all matters dealing with public transportation and to review and comment on applications for state and federal funds provided for public transportation. [Code of Laws of South Carolina §§ 57–3–1010, 57–3–1050 \(Cum Supp. 1979\)](#).

Whether these duties and responsibilities, or any one of them, can be funded with gasoline tax revenues and motor vehicle license fees depends on those statutes which authorize the collection and disbursement of funds by the Department. Being a creature of statute, the Department has only that express or implied authority granted to it by statute. Therefore, a review of the Department's sources of revenue and authorized expenditures is necessary.

Departmental revenue is derived chiefly from certain taxes and license fees. *See, e.g.,* [Code of Laws of South Carolina §§ 12–27–380–400, 12–29–440, 12–31–500 \(Cum Supp. 1979\)](#). All revenue and income expendable by the Department is consolidated in the State Highway Fund. [Code of Laws of South Carolina § 57–11–20 \(1976\)](#). From this fund must be paid (1) the principal and interest on outstanding bonds ([§ 57–11–20](#)); (2) administrative, operating and law enforcement expenses ([§ 57–11–40](#)); (3) maintenance and construction expenses ([§§ 57–11–50, 57–5–850](#)); (4) workmen's compensation claims ([§ 57–3–500](#)); (5) damage suit claims ([§ 57–5–1870](#)); and other expenses for purposes provided by law ([§ 57–11–20](#)).

Even though the State Highway Fund is established by statute and its disbursements are controlled by various other statutes, the Department still must have appropriations enacted by the General Assembly before it may expend monies. [Article X § 8 of the South Carolina Constitution](#) provides: 'Money shall be drawn from the Treasury only in pursuance of appropriations made by law.' [Article IV § 21 of the South Carolina Constitution](#) in pertinent part provides: 'Bills appropriating money out of the Treasury shall specify the objects and purposes for which the same are made, and appropriated to them respectively their several amounts in distinct items and sections.'

The clear and unambiguous language of the Act and the absence of any appropriations by the General Assembly leads to the conclusion that gas tax and license fee revenues cannot be used to finance research programs and pilot projects concerning the development of public transportation as defined within the Act.

*3 Sections 1(5), 9, and 10 of Act 82 express the General Assembly's intentions:
Gasoline tax revenues and motor vehicle license fees should continue to be used for highway construction, maintenance and operation, and the public transportation responsibilities given to the Department by this act will be financed from other sources. (Section 1(5))

. . . The members of the Interagency Council shall serve without compensation, but those members who are not full-time officers or employees of the State shall receive such per diem, mileage and subsistence as provided by law for members of boards, commissions and committees from sums appropriated by the General Assembly to the Department for the accomplishment of public transportation responsibilities. [Code of Laws of South Carolina. \(§ 57–3–1030 \(Cum Supp. 1979\)\)](#). (Section 9)

. . . The salaries of the Executive Assistant to the Interagency Council, such other staff and clerical personnel employed by the Department and assigned to public transportation responsibilities and every other cost or disbursement for accomplishment of public transportation goals of the Department shall be paid from sums appropriated by the General Assembly to the Department for Public Transportation. [Code of Laws of South Carolina. \(§ 57-3-1040 \(Cum Supp. 1979\)\)](#). (Section 10)

In light of the limitation of the use of gas tax and license revenues for salaries of the members of the Interagency Council and its staff and for the Department's new public transportation responsibilities, the General Assembly appropriated from the general fund monies to accomplish its tasks. See 60 Acts and Joint Resolutions 1713, 1719 (1978) (Act No. 586); 60 Acts and Joint Resolutions 1813, 1822 (1978) (Act No. 632); 60 Acts and Joint Resolutions 1872, 2163, 2192, 2239 (1978) (Act No. 644); 61 Acts and Joint Resolutions 446, 492 (1979) (Act No. 194); 61 Acts and Joint Resolutions 524, 822, 894 (1979) (Act No. 199); 1979-80 Supplemental Appropriations Act § 1, Item 79 (Act No. 519 of 1980); 1980-81 General Appropriations Act §§ 116, 156A Item 21. (Act No. 517 of 1980). So in addition to clearly specifying that gas tax and license fee revenues would not be used for 'public transportation' matters, the General Assembly, by later enactments authorizing appropriations from the general fund, has restated its intentions. Furthermore, a review of §§ 116, 156A, and 157 of the 1980-81 General Appropriations Act (Act No. 517 of 1980) reveals no appropriations for public transportation, aside from specific line items for carpool/vanpool programs and certain pilot projects which are paid from the general fund of the State.

Finally, the legislative history of the last act involving gas tax revenue (Act No. 506, 61 Acts and Joint Resolutions 1480 (1980)) supports these conclusions. Prior to the enactment of this legislation an amendment was considered by the House which would have created a public transportation fund constituted by a percentage of the gas tax revenues. South Carolina House Journal at 2480, 2687 (1980); House, Ways and Means Memorandum to Members, RT: GBB Amendment No. 6 of April 16, 1980. That amendment was subsequently rejected and references to a public transportation fund were absent from the final version of Act No. 506.

CONCLUSION:

*4 In the absence of an appropriation by the General Assembly, gasoline tax revenues and motor vehicle license fees may not be used to finance research programs and pilot projects concerning the conveyance of human passengers by bus, van or any other ground surface vehicle which is provided to the general public, or selected groups thereof on a regular and continuing basis.

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1980 S.C. Op. Atty. Gen. 134 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-84, 1980 WL 81966