

1977 S.C. Op. Atty. Gen. 42 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 7743, 1977 WL 24386

Office of the Attorney General

State of South Carolina

Opinion No. 77-43

February 2, 1977

***1 THE LEGISLATIVE AUDIT COUNCIL MUST COMPLY WITH THE PROVISIONS OF SECTION 1-721 THROUGH SECTION 1-731, 1962 CODE OF LAWS OF SOUTH CAROLINA, AS AMENDED.**

TO: Carl B. Harper, Jr.
Chairman
Legislative Audit Council
State of South Carolina

QUESTION PRESENTED:

Must the Legislative Audit Council comply with the provisions of Section 1-721 through Section 1-731, 1962 Code of Laws of South Carolina, as amended, regarding the submission of a proposed budget by the Budget and Control Board to the General Assembly?

AUTHORITIES:

Article X, Section 9, Constitution of the State of South Carolina, 1895, as amended.

Sections 1-721 through 1-731, 3-111, 3-115, 1962 Code of Laws of South Carolina, as amended.

DISCUSSION:

The Budget and Control Board is directed by Sections 1-721 through 1-731, 1962 Code of Laws of South Carolina, as amended, to prepare and submit each year to the General Assembly a proposed budget 'containing a complete and itemized plan of all proposed expenditures for each State department, bureau, division, officer, board, commission, institution or other agency or undertaking'. To effectuate this task, the Budget and Control Board is required by Section 1-722 to conduct an annual survey of all the departments, bureaus, commissions and agencies of the State; and each of the departments, bureaus, commissions and agencies is required by Section 1-723 to furnish the Budget and Control Board with an annual estimate of its fiscal needs. The results of these surveys and estimates, serve as the basis for the proposed budget that is prepared by the Budget and Control Board for recommendation to the General Assembly as required by Section 1-727.

The budget prepared by the Budget and Control Board serves merely as a working draft for the General Assembly, and it cannot be made binding on the General Assembly without violating the provisions of Article X, Section 9, of the South Carolina Constitution and Section 1-730 of the Code. See also: [Gregory v. Rollins](#), 230 S. C. 269, 95 S. E. 2d 487 (1956).

The power to adopt alter or amend the budget for the operation of the State rests solely in the General Assembly, the department to which the Legislative Audit Council is made directly responsible by the express provisions of Section 30-111: The Council shall be directly responsible to the General Assembly and shall be independent of any other State agency, board or department. (Emphasis added).

Since the phrase 'state agency' as used in Section 30-111 and as defined in Section 30-115 is clearly broad enough to encompass the Budget and Control Board, a conflict necessarily arises between Section 30-111 and the fiscal duties imposed upon the Budget and Control Board by the provisions of Sections 1-721 through 1-731 if those duties permit the Budget and Control Board to control the Legislative Audit Council.

In preparing its proposed budget to the General Assembly, the Budget and Control Board is not bound by any provision of law to conform its recommendations to the fiscal estimate submitted by an agency pursuant to Section 1-723, but it is clear that no recommendation of the Budget and Control Board is binding in any way on the General Assembly. Thus, although the ability of one State agency to increase or decrease the budget of another State agency could be used as an effective means of control, the duties of the Budget and Control Board in preparing a proposed budget for the General Assembly, being advisory only, do not interfere with the Legislative Audit Council's independent status.

CONCLUSION:

*2 Therefore, it is the opinion of this Office that the Legislative Audit Council must comply with the provisions of Sections 1-721 through Section 1-731 of the 1962 Code of Laws of South Carolina, as amended, since those provisions do not impede the 'independent status' conferred upon the Legislative Audit Council by Section 30-111.

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