

1977 S.C. Op. Atty. Gen. 128 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-153, 1977 WL 24495

Office of the Attorney General

State of South Carolina

Opinion No. 77-153

May 12, 1977

*1 The Honorable John P. Gardner, Jr.

Member

House of Representatives

Darlington County

Box 167

Darlington, South Carolina 29532

Dear Mr. Gardner:

Your letter of March 15, 1977, requests my opinion as to the constitutionality of the State Budget and Control Board. You ask whether 'the Board's membership and duties contravene the constitutional provisions guaranteeing the distinct functions of the executive and legislative branches.'

After exhaustive research of this problem, I am convinced that its resolution should be accomplished by judicial declaration as to the constitutionality of the Board. The powers vested in the Board are of such far-reaching effect and so profoundly affect the governmental affairs of South Carolina that a speedy and final determination of the issue should be made, and this can only be done in the courts. My study indicates that questions of such a serious nature exist as to warrant such a course.

It is my opinion, therefore, that the matter should be submitted to the courts and that, in view of the fact that your question submitted to me has received interest and concern among the citizens at large, an early determination should be sought.

Very truly yours,

Daniel R. McLeod

Attorney General

ATTACHMENT

WHEREAS, the Attorney General of South Carolina has expressed the opinion that questions of such serious nature exist with respect to the validity of the State Budget and Control Board as to warrant the submission of the issue to the courts of South Carolina; and

WHEREAS, the validity of the actions of the Budget and Control Board are of such far-reaching effect in the government of this State that an early determination of the matter should be obtained by judicial declaration:

NOW, THEREFORE, BE IT RESOLVED That the Attorney General of South Carolina is requested to forthwith institute an action in the courts of this State seeking a determination of whether the membership, powers and duties of the State Budget and Control Board are in conflict with Article 1, Section 8 of the Constitution of South Carolina which provides that the legislative, executive and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.

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