

1977 WL 37160 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 30, 1977

***1 RE: Allocation of Funds of Greenville County to Municipalities and Special Service Districts**

Joseph H. Earle, Jr., Esquire
Greenville County Attorney
18 Beattie Place
Greenville, South Carolina 29601

Dear Mr. Earle:

Your letter dated August 19, 1977, has been referred to Assistant Attorney General John Von Lehe and me for reply.

Before providing you with my own conclusions, however, I would prefer to have those of yours as well as the authority in support thereof. Upon receipt of such, I will provide you with my opinion.

Unofficially, my view is that county revenue sharing funds may not be employed for the benefit of only a portion of the county.

It may be, however, that a declaratory judgment action should be brought to determine the issue raised by you in your letter.

Kindest personal regards,

C. Tolbert Goolsby, Jr.

ATTACHMENT

¶405 Compliance With State And Local Law

Recipient governments may expend revenue sharing funds only in accordance with state and local laws and procedures that are applicable to the expenditure of their own revenues (31 C.F.R. § 51.40(c)). If a government does not have the authority to spend its own funds for a particular activity, it may not spend revenue sharing funds for that purpose, even if that activity is permissible under the revenue sharing act.

Revenue sharing funds may be transferred to a public or private secondary recipient for use by that secondary recipient in connection with a permissible expenditure under the revenue sharing act, but only if such transfers are allowable with respect to non-revenue sharing funds. For example, if state law prohibits local funds from being used to subsidize private business enterprises, revenue sharing funds may not be used for that purpose.

If a recipient government has any doubt that it has authority to spend its own funds for an activity that is permissible under the revenue sharing act, it should request an opinion from its own legal counsel or from the state's attorney general. It is the responsibility of the recipient government to enforce its own local fiscal law. However, the fact that a recipient government had not, prior to receiving revenue sharing funds, expended its local revenues on certain programs, does not preclude expenditure of revenue sharing funds for such programs so long as there would be no violation of state and local law in so doing.

In an action by the state treasurer to compel the governor to transfer to the state treasury all revenue sharing funds received by him, the Supreme Court of West Virginia held that federal revenue sharing funds received by the state constitute monies received or collected on behalf of the state, which must under state statute be promptly deposited with the state treasurer rather than being deposited by the governor in any depository other than the state treasury. The governor had contended that he should

not be required to relinquish complete control over the revenue sharing funds prior to provision for expenditure of such funds by the state legislature. *Moore v. Kelly*, 197 S. E. 2d 106 (W. Va.), cert. denied, 42 U. S. L. W. 3385 (January 7, 1975).

¶401 Summary Of Restrictions And Limitations On The Use Of Revenue Sharing Funds

*2 The revenue sharing act contains several specific restrictions and limitations on the uses of funds. Those which apply to all revenue sharing funds are as follows:

recipients must comply with state and local laws applicable to the expenditure of their own revenues when spending revenue sharing funds (¶405);

recipients must assure that any construction project funded 25 percent or more with revenue sharing funds complies with the Davis-Bacon Act (¶420-¶427);

recipients must assure that, under certain circumstances, their own employees are paid the prevailing wage (¶410);

recipients must follow specific procedures if they invest revenue sharing funds (¶507); and

there are time limitations on the expenditure of funds (¶508).

There is one restriction applicable only to funds received after January 1, 1977 which prohibits the use of revenue sharing funds for lobbying purposes (¶415).

Anti-discrimination provisions were included in the 1972 act, but were substantially revised by the 1976 amendments. *Handbook* ¶440 *et seq* details these provisions and distinguishes between those which apply to funds received prior to January 1, 1977 and those which apply to funds received after that date.

There is a prohibition against using revenue sharing funds to match other federal funds which applies only to funds used, obligated or appropriated prior to January 1, 1977. These provisions are explained in ¶490.

To date, the courts have held that no other federal laws apply to revenue sharing funds. Specific instances in which several federal statutes were found to be inapplicable to revenue sharing funds are detailed in ¶480.

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