

1976 S.C. Op. Atty. Gen. 78 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4264, 1976 WL 22884

Office of the Attorney General

State of South Carolina

Opinion No. 4264

February 17, 1976

*1 Mr. George Lusk

South Carolina State Housing Authority

Suite 1101

1122 Lady Street

Columbia, SC 29201

Dear Mr. Lusk:

You have requested an opinion from this Office as to whether or not monies received by the Housing Authority in the course of its programs may be kept separate and apart from the State General Fund and carried over from year to year by the Housing Authority. The power of the Housing Authority to charge fees has already been discussed in an opinion letter dated September 4, 1975, from Karen LeCraft Henderson, Assistant Attorney General, to L. Steve Mayfield. The primary source of the monies generated by the Housing Authority will be mortgage lending fees charged by the Authority, although several other smaller sources of funds also exist. In each case, the funds received will not represent the mere reimbursement of expended Housing Authority funds by some other source; it is recognized that such reimbursements will go into the General Fund.

In the proposed arrangement, the Housing Authority would collect the fees and other monies not representing reimbursements and would deposit them with the State Treasurer in accordance with Section 1-751, 1962 Code of Laws of South Carolina, but those funds would not become part of the General Fund; the Housing Authority would retain control over their expenditure.

There is, at present, no constitutional requirement that revenues generated by State agencies and institutions become part of the General Fund of the State. However, Section 1 of the 1975 General Appropriation Act (Act No. 237 of 1975) provides that: For the fiscal year 1975-76 except as hereinafter specifically provided, all general state revenues derived from taxation, licenses, fees, or from any other source whatsoever, and all institutional and departmental revenues or collections, including income from taxes, licenses, fees, the sale of commodities and services, and income derived from any other departmental or institutional source or activity, shall be remitted to the State Treasurer as collected, when practicable, but at least once each week, and shall be credited, unless otherwise directed by law, to the General Fund, of the State. [Emphasis added]

The question is whether or not the various powers given to the Authority, including the power to 'create and establish such funds as may be necessary or desirable for its corporate purposes,' amount to a direction by law to keep funds from being credited to the General Fund. It is the opinion of this Office that Act No. 288 of 1975 (59 Stat. 752) contains no such provision. Sections 4(19) and 4(21) of that act are too vague to be properly construed as having the effect of providing that fees shall be used for operating expenses; compare Section 28-13 and Section 56-1326.1, 1962 Code of Laws, as examples of clear direction by law for the retention or use of fees by the agencies which collected them. The aforementioned opinion letter by Karen LeCraft Henderson was concerned primarily with the power of the Authority to charge fees; the effect of Section 1 of the 1975 Appropriation Act was not then under consideration.

Sincerely yours,

*2 Kenneth P. Woodington

Assistant Attorney General

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