

1978 WL 35085 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 30, 1978

*1 Mr. Donald P. Reed
County Administrator
Fairfield County Council
Post Office Box 216
Winnsboro, South Carolina 29180

Dear Mr. Reed:

You have requested an opinion from this office as to whether or not the Fairfield County Council (Council) is authorized to transfer surplus general county funds to the Fairfield County Board of Education (Board) for the latter's use in school matters. In my opinion, the Council is so authorized as hereinafter discussed.

[Section 4-9-140, CODE OF LAWS OF S.C., 1976](#), provides in part as follows:

Council may make supplemental appropriations which shall specify the source of funds for such appropriations. The procedure for approval of supplemental appropriations shall be the same as that prescribed for enactment of ordinances.

... [A] supplemental appropriation shall ... not be construed to prohibit the transfer of funds appropriated in the annual budget for purposes other than as specified in such annual budget where such transfers are approved by the council. [Emphasis added.]

To me, this provision means that if the surplus funds were originally, i.e., at the time the county budget was enacted, appropriated for a purpose subsequently determined to be unnecessary, then the Council can transfer those funds to another purpose simply by approving such a transfer and without having to meet the requirements for the enactment of a budget ordinance. On the other hand, if the surplus funds represent additional funds which have “come available during the fiscal year and which have not been previously obligated by the current operating or capital budget” [see, [§ 4-9-140, CODE OF LAWS OF S.C., 1976](#)], then the procedure for the enactment of the budget ordinance must be followed. See, [§ 4-9-130\(2\), CODE OF LAWS OF S.C., 1976](#).

The opinion expressed herein is subject to one reservation, to wit: if the provisions of new Article X of the South Carolina Constitution are construed to alter the holdings of [Gray v. Vaigneur, 243 S.C. 604, 135 S.E.2d 229](#), and other cases, then the Council might not be authorized to effect such a transfer. Section 14(4) of new Article X permits the incurring of general obligation debt only for a purpose “which is a public purpose and which is a corporate purpose of the applicable political subdivision” [emphasis added]. While education is clearly a public purpose, it may not be a corporate purpose of a county [see, e.g., [§ 4-9-30\(5\), CODE OF LAWS OF S.C., 1976](#)] and, therefore, a county council may no longer be able to incur bonded debt for educational purposes to be transferred to the use of the county's school activities. Such a construction would have to equate bonded debt with the levy of a tax [cf., [S.C. CONST. Art. X, §§ 5 and 14\(4\)](#)] and would not take into account the fact that, in some South Carolina counties, the county council is the taxing authority for school purposes as well as for general county purposes. At any rate, the provisions of new [Article X](#) have not yet been so construed; accordingly, under presently valid case law, the Council can transfer surplus county funds to the Board for school purposes. See also, [Gilbert v. Bath, 267 S.C. 171, 227 S.E.2d 177](#).

With kind regards,

***2** Karen LeCraft Henderson
Assistant Attorney General

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