1979 WL 43485 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
July 26, 1979

***1** Honorable Richard W. Riley
Governor
State House
Columbia, South Carolina

Dear Governor Riley:
You have requested an opinion from my Office as to whether or not you are authorized to item veto this year's amendment to Act No. 1377 of 1968, the State Capital Improvements Bond Act. In my opinion, you are so authorized as hereinafter discussed.

Article IV, Section 21 of the South Carolina Constitution provides in part as follows:
Bills appropriating money out of the Treasury shall specify the objects and purposes for which the same are made, and appropriate to them respectively their several amounts in distinct items and sections. If the Governor shall not approve any one or more of the items or sections contained in any bill appropriating, money, but shall approve of the residue thereof, it shall become a law as to the residue in like manner as if he had signed it . . ..

The Governor's item veto authority, then, is limited to 'bills appropriating money.' In State, ex rel. Walker v. Derham, 61 S.C. 295, 39 S.E. 379 (1901), the South Carolina Supreme Court declared that:
. . . To appropriate money is to set it apart, to designate some specific sum of money for a particular purpose or individual. To do this effectually, it is necessary that the power in the legislature to defeat the application of the money to some particular object or individual by providing for some other use thereof, cannot exist except by some legislative action afterwards to the contrary. 61 S.C. at 262.

The authorities apparently agree that:
No particular form of words is necessary to constitute a valid appropriation, but the legislative intent to appropriate funds must be clear and certain; . . .. It is sufficient if an intention to make an appropriation is clearly evinced by the language of the statute, or that no effect can be given to the statute unless it is considered as making the necessary appropriation. Such intention may be ascertained from the entire statute. 63 AM.JUR.2d Public Funds § 48 at 438-9 (1972).

The State Capital Improvements Bond Act of 1968 [55 STAT. 3175 (1968)] was the subject of the test litigation entitled Mims v. McNair, 252 S.C. 64, 165 S.E.2d 355 (1969). In its decision upholding the constitutionality of that Act, the State Supreme Court described it as a permanent vehicle by which state capital improvement bonds can thereafter be issued from time to time. 252 S.C. at 75. The 1968 Act as well as the numerous amendments thereto have uniformly itemized specific amounts of bonds which can be issued for particular purposes or projects, to wit:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
***2** These amounts have not been regarded by the State Budget and Control Board, which is the body authorized to make provision for the issuance of state capital improvement bonds pursuant to Section 3(h) of Act No. 1377 of 1968, as maximum allowable amounts but, instead, my understanding is that that Board has consistently viewed them as specific

amounts to be issued and, accordingly, has made provision for the ultimate issuance of bonds in those precise amounts. This administrative interpretation of the meaning of the statute is, as you know, entitled to weight in determining whether or not the statute constitutes one which appropriates money. See, e.g., Faile v. South Carolina Employment Sec. Comm., 267 S.C. 536, 230 S.E.2d 219 (1976). Apparently, the State Budget and Control Board has regarded it as such.

Moreover, the General Assembly itself has interpreted the 1968 Act and the amendments thereto as 'appropriations' of the specific amounts respectively designated therein because, notwithstanding the fact that each year the General Appropriations Act includes a line item amount for the debt service requirements of, inter alia, capital improvement bonds, the following proviso annually appears thereafter:

Provided, further, that the General Assembly takes note of the fact that . . ., all of South Carolina's bonded debt is supported by a pledge of a special fund . . . and that under the statutes authorizing such bonds, it is the ministerial duty of the appropriate State officers and agencies to utilize the pledged revenues for the payment of the principal and interest of such bonds. Under the decisions of the Supreme Court of South Carolina, continuing appropriations have been made which cannot be diverted until all of the principal and interest on the bonds have been paid. Accordingly, . . . the . . . figures merely reflect the estimated debt service requirements of bonds of the State outstanding as of the date of the introduction of this legislation. 60 STAT. 1872 at 2164-5 (1978). [Emphasis added.]

The 'continuing appropriations' can only refer to the respective enabling bond statutes and, in the case of the Capital Improvements Bond Act, the State Supreme Court has declared it to be a 'permanent vehicle' as hereinabove noted. Unlike many States, the South Carolina legislature has not been prohibited from enacting continuing appropriations, as has long been recognized. See, e.g., Cox v. Bates, 237 S.C. 198, 116 S.E.2d 828 (1960); Grimball v. Beattie, 174 S.C. 422, 177 S.E. 668 (1934); Briggs v. Greenville County, 137 S.C. 288, 135 S.E. 153 (1926). Finally, it should be noted that new Article X, Section 13 of the South Carolina Constitution, which relates to the bonded indebtedness of the State, provides that:

In each act authorizing the incurring of general obligation debt the General Assembly shall allocate on an annual basis sufficient tax revenues . . .. S.C.CONST. art. X, § 13(4). [Emphasis added.]

***3** For all of these reasons, my opinion is that Act No. 1377 of 1968 and the amendments thereto constitute legislation 'appropriating money' so as to make them subject to the Governor's item veto authority granted by the State Constitution. They designate specific sums of money for particular purposes and the application of those sums to those purposes cannot be defeated by the General Assembly, not even by subsequent legislation according to the proviso in the annual general appropriations acts discussed earlier. Additionally, the argument can be made that no effect can be given to the 1968 Act and its amendments unless they are considered to provide for the necessary appropriations. 63 63 AM.JUR .2d Public Funds § 48 (1972). While other States have decided the same or a similar issue to the contrary [see, e.g., Thomas v. Rosen (Alaska), 569 P.2d 793 (1977); Martin v. State Highway Comm., 88 P.2d 41 (1938); cf., however, Fuselier v. State Market Comm. (La.), 249 So.2d 569 (1971)], nevertheless, the differences among their respective state constitutions and legal precedents and those of South Carolina constitute a basis for my not considering them to be determinative of the question which you have posed to me.

Very truly yours,

Daniel R. McLeod
Attorney General

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