

1978 WL 35161 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 10, 1978

\*1 Peter D. Hyman, Esquire  
Florence County Attorney  
Post Office Box 1770  
Florence, South Carolina 29503

Dear Mr. Hyman:

You have requested an opinion from this Office as to whether or not the Florence County Council (Council) is authorized to advance approximately \$55,000 of Florence County general funds in order to meet the October 13, 1978, CETA (Comprehensive Employment and Training Act) payroll in Florence County, such amount to be reimbursed to the County by the Manpower Division of the Office of the Governor. In my opinion, it is so authorized as hereinafter discussed.

The prohibition against the use of county funds except for certain specified items and 'for ordinary county purposes' which was contained in former Article X, Section 6 of the South Carolina Constitution is no longer in effect. See generally, Knight v. Salisbury, 262 S.C. 565, 206 S.E.2d 875 (1974). Instead, new [Article X, Section 5 of the South Carolina Constitution](#) requires only that taxes shall be levied for, and their proceeds applied to, a 'public purpose.' My understanding is that the contemplated advance of county funds to meet the October 13th CETA payroll is 'for the purpose of salaries and wages to CETA employees working in Florence County departments and agencies as distinguished from sub-grantees such as the Boy's Club, City of Florence, etc.' See, Memorandum, M. J. Coles to Peter D. Hyman, dated October 4, 1978. As you state in your letter of request, the CETA employees affected by the \$55,000 request are de facto employees of Florence County. Clearly, then, the proposed loan of Florence County general funds will be for a public purpose since they will be used to pay people who are the equivalent of county employees. Likewise, the requirement of [Article X, Section 9](#) that '[m]oney shall be drawn from the . . . treasury of any . . . political subdivisions . . . only in pursuance of appropriations made by law' will be met if the Council makes the advance in accordance with any applicable state statutes and county ordinances.

The pertinent state statute is [Section 4-9-140, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, which 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.

For the purposes of this section a supplemental appropriation shall be defined as an appropriation of additional funds which have come available during the fiscal year and which have not been previously obligated by the current operating or capital budget. The provisions of this section 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 when such transfers are approved by the council.

As I understand it, the \$55,000 advance will come from the contingent fund of Florence County which is to be used 'to cover items of expenditure for which no express provision is made elsewhere in the [annual appropriations] ordinance.' See, Organization and Rules of the Florence County Council, § III E at 18. In my opinion, the use of the contingent fund to meet the October 13th CETA payroll would not constitute a supplemental appropriation as hereinabove defined

unless it amounted to an appropriation of additional funds which had come available during the fiscal year and which had not been previously obligated by the current budget. Whether or not the contingent fund amounts to a fund which has come available during the fiscal year and has not been previously obligated by the current budget is a fact question which can only be determined locally.

\*2 Assuming, however, that the contemplated advance does not constitute a supplemental appropriation, the ordinance procedure will not have to be complied with since only Council 'approval,' presumably, in the form of a resolution, is needed. This is so even under the applicable Florence County enactment which provides that the annual appropriations ordinance 'shall not preclude such emergency ordinances as are authorized under the Home Rule Act, nor supplemental appropriations as described [t]herein' [emphasis added]. See, Organization and Rules of the Florence County Council, § III E at 18.

I am enclosing the material which you forwarded to me.

With kind regards,

Karen LeCraft Henderson  
Senior Assistant Attorney General

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