

1978 S.C. Op. Atty. Gen. 217 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-193, 1978 WL 22661

Office of the Attorney General

State of South Carolina

Opinion No. 78-193

November 15, 1978

***1 (1) Minibottle revenues collected pursuant to § 61-5-130 of the South Carolina Code and disbursed to the counties are 'local funds' as that phrase is used in the South Carolina Human Services Demonstration Project Act.**

(2) The eight specified local commissions on alcohol and drug abuse are entities separate and apart from the South Carolina Commission on Alcohol and Drug Abuse.

(3) The South Carolina Human Services Demonstration Project Act authorizes the site manager to direct personnel of local commissions that contract with the South Carolina Commission on Alcohol and Drug Abuse for the purpose of delivery of human services.

Director

South Carolina Commission on Alcohol and Drug Abuse

QUESTIONS:

I. Are minibottle revenues collected pursuant to § 61-5-130 *et seq.* of the South Carolina Code (1976) and disbursed to counties considered local funds as that phrase is used in the South Carolina Human Services Project Act (Section 30, part II, Act 644 of 1978)?

II. Are local commissions on alcohol and drug abuse of the eight counties specified in the inquiry, separate entities from the South Carolina Commission on Alcohol and Drug Abuse?

III. Does part VII(D)(3) of Act No. 644 of 1978 authorize the site manager to direct personnel of a local commission that contracts with a State agency for the purpose of delivery of human services at the project site?

STATUTES AND CASES:

Section 30, Part II, Act No. 644 of 1978 Acts of the General Assembly of South Carolina; § 61-5-130 *et seq.* Code of Laws of South Carolina 1976 as amended; §§ 4-1-10 and 4-9-30 [Code of Laws of South Carolina](#), 1976 as amended; Section 121, Part I, Act 644 of 1978 Acts and Joint Resolutions of the General Assembly of South Carolina; [Parker v. Bates Treasurer, et al.](#), 216 S.C. 52, 56 S.E. 2d 723 (1949); [Cox v. Bates, et al.](#), 237 S.C. 198 116 S.E. 2d 828 (1960); [Chesterfield County v. State Highway Department](#), 191 S.C. 19, 35 S.E. 2d 686 (1939); [State v. Lucas, et al.](#), 39 Ohio Op. 519, 85 N.E. 2d 154 (1949); [Monticello House Incorporated v. County of Calhoun](#), 20 Misc. App. 169, 173 N.E. 2d 759 (1970); [Hill v. Holmes](#), 176 S.E. 409 (1934); Acts 572, 452, 630, 640, 653, 140 and 808 of 1973 Acts of the General Assembly of South Carolina; Act 1741 of 1972 Acts of the General Assembly of South Carolina, 4 *Antieau's Local Government Law* § 44.25 (1966).

DISCUSSION:

I. The phrase 'local funds' is relative and its meaning must be ascertained from its actual usage. Local funds as used in part VII(D)(2)(a) and (b), Section 30 of Part II, Act 644 of 1978, clearly includes 'county funds' as it is contrasted

therein to federal and state funds. Thus, critical to the issue herein is whether disbursed minibottle revenues constitute county funds.

Though this particular type of grant to counties enjoys widespread use, 4 *Antieau's Local Government Law* § 44.25 (1966), the authorities in South Carolina are scant on the particular question involved. Axiomatic, counties are but arms of the state and are subject to the fiscal control of the state. *Cox v. Bates et al.*, 237 S.C. 198, 116 S.E. 2d 828 (1960). In the same vein, however, it is equally elementary that counties have the authority to maintain and hold assets including funds in their own names. §§ 4-1-10 and 4-9-30, *Code of Laws of South Carolina*, 1976, as amended. And clearly the right of expenditure to disburse minibottle funds lies with the county in accordance with the special terms of the authorization act. *Parker v. Bates*, 216 S.C. 52, 56 S.E. 2d 723 (1949). While these facets can be established by a study of South Carolina law the precise question of whether or not state funds, once they are disbursed to the county for a particular purpose, become funds of the county has not been answered in South Carolina.

*2 The authorities existing elsewhere are scarce; however, they are generally consistent in the conclusion that once the state's funds are disbursed to the counties for their use, the funds become county funds. *Monticello House Incorporated v. County of Calhoun*, 20 Mich. App. 169, 173 N.E. 2d 759 (1970); *See also, Hill v. Holmes*, 179 G.A. 528, 176 S.E. 409 (1934). In *State v. Lucas*, 29 Ohio Op. 519, 85 N.E. 2d 154 (1949), the Ohio Court addressed the precise issue and concluded with the following logic:

'Political subdivisions of the state are entitled to a share of many funds collected by the state for express purposes, such as the gasoline fund, auto tax fund, sales tax fund, school fund, and others, all of which by express direction of the law must be used by the county and other political subdivisions for the purpose provided by statute. It would not be contended that any of such funds, after payment thereof to the political subdivisions, are still state funds although collected and distributed by the state, although, under the provisions of the various statutes, such funds may only be legally used for specified purposes.' at 155.

The logic of the above mentioned authorities, together with the existing law in South Carolina that counties are creatures of statute and possess the authority to maintain assets leads to the conclusion that minibottle funds, post disbursements to the counties, become 'county funds.'

II. Local Alcohol and Drug Commissions originated with the enabling provisions of § 61-5-320 *et seq.* of the South Carolina Code (1976). Pertinent provisions of said section are as follows:

Prior to the use of the revenues described in § 61-5-130, the governing body of each county shall:

(a) designate a single existing *county agency* or organization, . . . or create a new *agency* for that purpose. (Emphasis added).

In addition, § 61-5-330 provides in part:

The single *county agency*, as provided for in § 61-5-320, . . . (Emphasis added).

Other provisions iterate the county control and the regulation of the local agency. Thus, it is apparent that the minibottle revenues were to be disbursed to county agencies which are under the direction and control of county governing bodies.

Of the several counties specified in the inquiry, each has a local committee created by legislative enactment.¹ Although the acts creating the local commissions of the specified counties vary in several particulars, it is apparent that each local commission is a separate and distinct entity, e.g., Beaufort County, Act 572 of 1973 Acts of South Carolina, ' . . . (a) be a body corporate and politic. . . . '

III. Part VII(D)(3) of the South Carolina Human Services Demonstration Project Act empowers the 'site manager' to direct personnel 'utilized by the enumerated state agencies for the purpose of delivering human services at the project site.' The term personnel is broader than those persons actually on the payroll of the state agency and may also include persons who render services to the enumerated agencies as 'contractors'. Local commissions contract with the South Carolina Alcohol and Drug Abuse Commission, see § 61-5-310 *et seq.*, for varying purposes, many of which pertain to the delivery of human services as defined in the Act. As such, it appears that this subsection of the Act authorizes the site manager to direct the employees of the contracting agencies (local commissions), who are involved in the delivery of human services at the project site.

CONCLUSION:

*3 I. Thus, the minibottle funds that have been disbursed to the counties pursuant to § 61-5-130 *et seq.* are 'local funds', to the extent that such phrase was used in the South Carolina Human Services Demonstration Project Act, notwithstanding the fact that special conditions are attached to the expenditure of funds.

II. Since each local commission is a county agency with its origin per a specific act of the General Assembly of South Carolina and an enabling statute which authorizes the counties to appoint, designate or create the agency, it appears that the local commissions are autonomous governmental units and separate entities from the state commission.

III. Part VII, (D)(3) of the South Carolina Human Services Demonstration Project Act authorizes the site manager to direct personnel of local commissions of the local alcohol and drug abuse commissions who contract with the South Carolina Commission on Alcohol and Drug Abuse for the delivery of human services at the project site.

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Footnotes

¹ Beaufort County, Act 572 of 1973; Berkeley County, Act 174 of 1972; Charleston County, Act 452 of 1973; Darlington County, Act 630 of 1973; Dorchester County, Act 640 of 1973; Florence County, Act 653 of 1973; Greenville County, Act 140 of 1973; York County, Act 808 of 1973.

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