

1973 WL 26835 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 10, 1973

\*1 The Honorable Grady L. Patterson, Jr.  
State Treasurer  
Post Office Box 11778  
Columbia, South Carolina 29211

Dear Mr. Patterson:

You have inquired as to whether funds appropriated in the current annual Appropriations Act for the year 1973-74 for defense of indigents may be used so as to pay, from a county's allocable share, bills for the defense of indigents which were incurred during the previous fiscal year, but which have not been paid because of the exhaustion in some counties of their allocated amounts under the appropriate statute for defense of indigents.

It is my opinion that such payments may not be made.

The effect of the current Appropriations Act is to appropriate the sum of \$440,000.00 for the payment of bills of attorneys who represent indigent defendants. The Act contains the following significant proviso:

'Provided, further, that it is the intent of the General Assembly that any expenses incurred in any county for the defense of indigents in excess of the county's share of funds appropriated in this section for such purpose shall be borne by the county.'

Funds allocated to counties from the amount appropriated are distributed in accordance with the per capita formula provided for in Sections 17-281, *et seq.*, Code of Laws, 1962, as amended. The appropriations made in the current Appropriations Act are for the year 1973-74, except as otherwise specifically provided (Section 1) and the effect of the proviso set forth above, in my opinion, is to require that these appropriations to the counties must be used only for bills incurred and submitted during the fiscal year 1973-74. Any preceding deficits in a county must be borne by the county.

This conclusion is rendered apparent by consideration of the proposals submitted by you to the General Assembly, which proposals were not incorporated in the Appropriations Act; instead, the proviso above was inserted. Your proposals read as follows:

'Notwithstanding any other provisions of law, the sum of \$60,000 is hereby appropriated for the purpose of paying attorneys' fees incurred during fiscal 1971-72 for the defense of indigents of the several counties in accordance with the fee schedule (of the Defense of Indigents Act).'

'Notwithstanding the per capita distribution of funds contained in (the Defense of Indigents Act) payment of attorneys' fees incurred during the fiscal years 1971-72 and 1972-73 for defense of indigents of the several counties may be made in accordance with the fee schedule contained in such Act.'

The rejection of this language by the General Assembly and the adoption of the proviso quoted first above compels the view that the General Assembly meant for current appropriations for defense of indigents to be paid and that any deficit that may have arisen in previous years or that may arise currently should be borne by the respective counties.

Very truly yours,

Daniel R. McLeod  
Attorney General

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