

8198 Litwary



HENRY McMASTER
ATTORNEY GENERAL

July 19, 2006

Robert C. Norwood, Chairman
J. Walter Brown, Sr., Member
Rock Hill School District Three Board of Trustees
Post Office Drawer 10072
Rock Hill, South Carolina 29731

Dear Mr. Norwood and Mr. Brown :

We received your letter requesting a follow-up opinion to an opinion we issued to you on May 23, 2006. In your previous request letter, you informed us of your concern that the Legislature improperly appropriated \$11 million in surplus funds from the South Carolina Education Lottery (the "Lottery") to "fund several one-time special projects," which you believed did not meet the requirement under South Carolina law that such funds be used for an educational purpose. Op. S.C. Atty. Gen., May 23, 2006. Because we did not have information as to the specific appropriations to which you referred, we provided you with general guidance as to expenditures of funds generated by the Lottery, both generally and specifically with regard to surplus funds. In your current request letter, you provided us with the following information as to the appropriation of the \$11 million surplus:

As we understand it, the budget had \$11 million for textbooks from the General Fund and \$11 million from EIA funds for teacher specialists. To justify the shifting of funds they moved the teacher specialist appropriations to the lottery funds, the textbooks to EIA funds, and freed up the \$11 million in the General Fund. This enabled them to show that the EIA and lottery funds were going to educational purposes as required by state law. It is our belief that this is clearly a case of supplanting funds in violation of State Law 59-150-350(C)(2) and 59-150-350(D).

In addition, you listed the proposed eleven amendments accounting for the additional \$11 million from the General Fund. These amendments are as follows:

1. Councils of Government (thru Budget and Control Board)
\$110,000

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2. National Guard Retirement (through B & CB Retirement Systems) \$926,000
3. Targeted Case Management Systems (thru DJJ) \$1.7 million
4. ICAR, Greenville (thru Department of Transportation) \$1.5 million
5. Port Access Road Charleston (thru Department of Transportation) \$3 million
6. Local Government Fund (thru B & CB) \$2,524,000 with an additional \$100,000 added later
7. Public Library Construction Grants (State Library) \$10,000
8. Shop Road/Farmers Market By-Pass Repair/Construction (DOT) \$1 million
9. Civil Air Patrol (Adjutant General) \$30,000
10. Newberry County Public Safety Enhancement (B & CB) \$100,000
11. Small Business Center (U.S.C.) \$100,000. This amendment was defeated and the money moved to item 6.

Accordingly, you “request on behalf of the Rock Hill School District Three Board of Trustees that with the additional information provided that this be reviewed for an opinion.”

Law/Analysis

Article XVII, section 7 of the South Carolina Constitution (Supp. 2005) provides the following with regard to lotteries:

Only the State may conduct lotteries, and these lotteries must be conducted in the manner that the General Assembly provides by law. The revenue derived from the lotteries must first be used to pay all operating expenses and prizes for the lotteries. The remaining lottery revenues must be credited to a separate fund in the state treasury styled the ‘Education Lottery Account’, and the earnings on this account must be credited to it. Education Lottery Account proceeds may be used only for education purposes as the General Assembly provides by law.

...

In 2000, the year article XVII, section 7 was amended to allow for the Lottery, the Legislature enacted the South Carolina Education Lottery Act (the “Education Lottery Act”), which governs the operations of the Lottery, as well as, the use of Lottery funds. We discussed several of these provisions in detail in our prior opinion. Op. S.C. Atty. Gen., May 23, 2006. We emphasized the Constitution and section 59-150-350 of the South Carolina Code (2005) require Lottery funds be

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used for educational purposes. Id. We concluded, based on a October 7, 2004 opinion, the educational purpose requirement mandates “more than a tangential relationship must exist between the purpose for which the funds are to be used and education.” Id. (quoting Op. S.C. Atty. Gen., October 7, 2004).

From the information provided in your letter, the Legislature appropriated the \$11 million in surplus Lottery funds for educational purposes. You state the surplus Lottery funds were allocated for teacher specialists. Section 59-18-1530 of the South Carolina Code (2004) describes the role of teacher specialist. From this provision, we find teacher specialists serve in underperforming schools and provide classroom instruction, as well as, work with the school’s faculty. S.C. Code Ann. § 59-18-1530. Furthermore, section 59-150-355 of the South Carolina Code (2004), providing guidelines on appropriations and uses of Lottery funds, includes the appropriations for fiscal year 2002-2003. These appropriations include \$12,581,069 in funds for teacher specialists. Thus, we believe the Legislature’s appropriation of \$11 million dollars in surplus Lottery funds to teacher specialists constitutes an educational purpose as required by the Education Lottery Act and the South Carolina Constitution.

In addition to the educational purpose requirement, as you point out, provisions of the Education Lottery Act also require appropriations from the Education Lottery Account supplement, not supplant existing funds appropriated for education. This requirement is stated in several of the Education Lottery Act provisions. First, section 59-150-350(C)(2) of the South Carolina Code provides: “Appropriations from the Education Lottery Account must be for educational purposes and programs only as defined in Section 59-150-350(D). These appropriations must be used to supplement and not supplant existing funds used for education.” (emphasis added). Furthermore, section 59-150-350(D) states: “The proportion of total recurring general fund and special fund revenues of the State expended for the total of public elementary, secondary, and higher education allocations in any fiscal year must not be less than the proportions in the fiscal year immediately before the fiscal year in which education revenues are first received from a state lottery, and must not be reduced or supplanted later by revenues received from a state lottery.” (emphasis added). Finally, section 59-150-355 of the South Carolina Code, discussing educational purposes and programs for which Lottery funds may be transferred by the Budget and Control Board, also states: “These appropriations must be used to supplement and not supplant existing funds for education.” (emphasis added). “The legislature’s intent should be ascertained primarily from the plain language of the statute.” Univ. of S. California v. Moran, 365 S.C. 270, 276, 617 S.E.2d 135, 138 (Ct. App. 2005). Thus, the Legislature, through its enactment of these provisions, clearly intended Lottery funds to supplement, not replace general fund appropriations for public education.

Your letter indicates the Legislature, upon discovering an \$11 million surplus in the Lottery Fund Account, replaced \$11 million allocated from the General Fund for textbooks with \$11 million of Education Improvement Act (“EIA”) funds originally allocated for teacher specialists. Then, the Legislature funded the \$11 million needed for teacher specialists with Lottery funds and reallocated

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the \$11 million in General Funds to non-educational purposes. According to your description, the Legislature, although indirectly, used surplus funds to fund education related purposes originally funded by the General Fund. Thus, it appears the Legislature's reallocation of funds contravenes sections 59-150-350 and 59-150-355 of the South Carolina Code. However, for this Office to opine as to whether these actions by the Legislature were in violation of the Education Lottery Act, we would be required to investigate the facts and circumstances surrounding its actions with respect to these appropriations. As we noted on many occasions, "this Office does not have the authority of a court or other fact-finding body, and therefore, it is unable to adjudicate or investigate factual questions." Op. S.C. Atty. Gen., April 4, 2006. Thus, we cannot conclusively determine whether the Legislature's actions were contrary to the Education Lottery Act.

Nevertheless, presuming the Legislature acted contrary to the Education Lottery Act, such actions may not be rendered invalid. "The supreme legislative power of the State is vested in the General Assembly . . ." Beaufort County v. Jasper County, 220 S.C. 469, 479, 68 S.E.2d 421, 426 (1951) (quotations omitted). Furthermore, "the General Assembly may enact any law not expressly, or by clear implication, prohibited by the State or Federal Constitution." Id. In Manigault v. Springs, 199 U.S. 473, (1905), the United States Supreme Court addressed the validity of an act passed by the Legislature without the formalities required by the Revised Statutes of South Carolina of 1893. The Court held: "As this is not a constitutional provision, but a general law enacted by the legislature, it may be repealed, amended, or disregarded by the legislature which enacted it." Id. at 487.

Several opinions of this Office cite the Supreme Court's decision in Manigault for the proposition that "[i]n adopting an act, ordinance, or rule, a legislative body acts in a legislative capacity. However, such act, ordinance, or rule, once adopted, is not necessarily binding upon future legislative bodies, which bodies are free to amend or modify previous actions taken." Op. S.C. Atty. Gen., March 31, 1988. See also, Op. S.C. Atty. Gen., January 20, 2004. In a recent opinion issued in May of this year, we specifically addressed the impact of a County Board of Election and Registration's disregard for its own bylaws. Op. S.C. Atty. Gen., May 4, 2006. We determined based on the Court's decision in Manigault, the Board may amend, repeal, or disregard its bylaws. Id. Thus, the Board's decision to disregard its own bylaws, would not per se invalidate its actions. Id.

Although, sections 59-150-350 and 59-150-355 provide that appropriations of Lottery funds must be used to supplement, not supplant existing educational funding, Article XVII, section 7 of the South Carolina Constitution does not contain similar language. Thus, failing to follow these provisions is not contrary to the Constitution. Although one would expect the Legislature to act in accordance with the statutes it enacts, based on Manigault and our prior opinions, the Legislature has discretion to disregard its own acts. Thus, assuming the Legislature acted in opposition to the requirements set forth in the Education Lottery Act, such disregard for its own legislation may not render its actions invalid.

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Conclusion

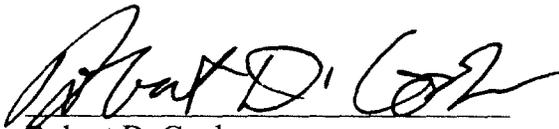
This Office does not have the same powers as a court, to investigate and determine issues of fact. Although your letter indicates the Legislature acted in contradiction of provisions of the Education Lottery Act, we cannot make an conclusive determination as to whether the Legislature violated these provisions in appropriating \$11 million of surplus Lottery funds. However, assuming the Legislature acted contrary to these provisions, a court may not find such actions invalid, as the Supreme Court recognized: As long as a legislative body does not act in contradiction of a constitutional provision, it may repeal, amend, or even disregard the general law it enacted.

Very truly yours,



Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General