

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

March 12, 1990

SUBJECT: Taxation & Revenue - Requirements of a political subdivision to have a balanced budget.

SYLLABI: 1. Counties, municipalities, schools and special purpose districts must adopt an annual budget that balances estimated revenues with estimated expenditures.

2. The budgets of counties, municipalities, schools and special purpose districts should not include a tax levy or an appropriation for a contingency or reserve fund. The same should provide for sufficient revenue to fund estimated expenditures for the budget year.

TO: Mr. E. Gregorie Frampton
Executive Director
South Carolina Tax Commission

FROM: Joe L. Allen, Jr. *JLA*
Chief Deputy Attorney General

QUESTIONS:

1. Are political subdivisions required to have a balanced budget?
2. Can the budget include a contingency or reserve fund, or any type fund which is not for a specifically budgeted item?

APPLICABLE LAW: Article X, Section 7(b) of the South Carolina Constitution; Sections 4-9-140, 5-9-40, 5-11-40, 5-13-40, 6-11-260, 12-43-280 and 12-43-290 of the South Carolina Code of Laws, 1976, as amended.

DISCUSSION:

Question 1:

Article X, Section 7 (b) provides that:

"Each political subdivision of the State as defined in Section 14 of this article and each school district of this State shall prepare and maintain annual budgets which provide for sufficient income to meet its estimated expenses for each year. Whenever it shall happen that the ordinary expenses of a political subdivision for any year shall exceed the income of such political subdivision, the governing body of such political subdivision shall provide for levying a tax in the ensuing year sufficient, with other sources of income, to pay the deficiency of the preceding year together with the estimated expenses for such ensuing year. The General Assembly shall establish procedures to insure that the provisions of this section are enforced."

Article X, Section 14 defines a "political subdivision" to mean "counties of the State, the incorporated municipalities of the State and special purpose districts, including special purpose districts which are located in more than one county or which is comprised of one or more counties."

The General Assembly has provided for the budgets of counties by Section 4-9-140, for municipalities by Sections 5-9-40, 5-11-40 and 5-13¹-40 and for special purpose districts by Section 6-11-260.

"A budget is a balance sheet or statement of estimated receipts and expenditures; a plan or method whereby expenditures are controlled." Black's Law Dictionary, Revised Fourth Edition; see also 5A Words and Phrases, Budget; and Webster's Ninth New Collegiate Dictionary.

By the plain language of the Constitution and the statutes, counties, municipalities, school and special purpose districts must adopt an annual budget that balances estimated revenues with estimated expenditures.

¹For school districts it is necessary to review the language of acts applicable to the specific district.

CONCLUSION:

Counties, municipalities, school and special purpose districts must adopt an annual budget that balances estimated revenues with estimated expenditures.

Question 2:

The question of whether these political entities could levy a tax to create a contingency or reserve fund is likewise answered by the same constitutional and statutory provisions. The word "contingency" is defined in Webster's Ninth New Collegiate Dictionary to mean:

"The quality or state of being contingent; a contingent event or condition: as (a) an event . . . that is of possible but uncertain occurrence; . . . something liable to happen as an adjunct to something else."

The word "contingent" is defined by the same authority to mean among other things, "likely but not certain to happen: possible."

The word "reserve" means to set aside for future use. Webster's Ninth New Collegiate Dictionary. Article X, Section 7 (b), provides that the budget shall provide "for sufficient income to meet . . . estimated expenses for each year." This language does not contemplate an appropriation for something that may happen upon a contingency or for a reserve fund for unbudgeted items.²

The budget must be limited to estimated expenses. This, does not mean, however, that there must be an exactness in budget matters beyond that which is reasonable.

". . . It is a fact of life that not all property taxes are ever collected. It is a fact of life that expenses cannot always be anticipated and budgeted with mathematical certainty. Circumstances develop which could not have been anticipated. On the other

²A reserve fund is authorized for school districts for a limited purpose by Section 59-69-110.

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hand, sometimes expenses anticipated may be avoided. If, in the last analysis, during some particular year, there is a modest surplus or a modest deficit, no serious harm will come. Adjustments can be made the ensuing year. . . ." County of Lee v. Stevens, 277 S.C. 421, 289 S.E. 2d 155.

Section 12-43-280 fortifies this conclusion because the reason for an increase of taxes must be reflected on the tax notice.

CONCLUSION:

The budgets of counties, municipalities, school and special purpose districts should not include a tax levy or an appropriation for a contingency or reserve fund. The same should provide for sufficient revenue to fund estimated expenditures for the budget year.

JLAJR/jws