

The State of South Carolina



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December 21, 1989

The Honorable Carroll A. Campbell, Jr.
Governor of the State of South Carolina
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Carroll
Dear Governor Campbell:

You have asked for legal guidance with respect to whether or not you, as Governor, may continue to suspend Mr. Curtis Baggett who was recently acquitted of charges against him brought by the State pursuant to Section 11-9-20 of the Code of Laws of South Carolina. As I understand it, you suspended Mr. Baggett pursuant to Section 11-9-20. That Section provides in pertinent part:

It shall be unlawful for any officer, clerk or other person charged with disbursements of State funds appropriated by the General Assembly to exceed the amounts and purposes stated in such appropriations, or to change or shift appropriations from one item to another; provided, that transfers may be authorized by the General Assembly in the annual appropriation act for the State. Any officer, clerk or other person violating the provisions of this section shall be deemed guilty of malfeasance in office, and the Governor may, upon his attention being brought to the violation, at once suspend such officer and shall investigate the conduct of such person. If found guilty, such person shall be suspended from office by the Governor... .

Dacus v. Johnston, 180 S.C. 329, 185 S.E. 490 (1936), a case which you reference in your letter, is the only decision of the South Carolina Supreme Court which interprets Section 11-9-20. As you indicate in your letter, the Circuit Court has directed a verdict of acquittal in the case of State v. Baggett, concluding as a matter of law that Section 11-9-20 does not apply to the four grants

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which were the subjects of the indictments issued by the Grand Jury of McCormick County. To our knowledge, this ruling is the only legal precedent concerning the applicability of Section 11-9-20 to Rural Development grants. Thus, absent any new factual disclosures, the Circuit Court's decision in State v. Baggett would, from a legal standpoint, be dispositive in any consideration by the Governor as to whether or not a violation has occurred, for purposes of suspension, with respect to Rural Development grants.

You indicate that a continuing investigation, by both the State and federal governments is ongoing. Of course, on its face, Section 11-9-20 applies to any "officer, clerk, or other person charged with disbursements of state funds"; thus, if federal funds are the subject of the federal investigation which you reference, it would seem unlikely that the suspension provisions of Section 11-9-20 would apply. With respect to any ongoing State investigation, Dacus v. Johnston controls. The Supreme Court in Dacus makes it clear that the General Assembly has vested discretion in the Governor to determine whether the statute has been violated, thereby warranting suspension. As is the case with any discretionary decision, that is a judgment that only the officer delegated with authority to make the decision, in this case the Governor, can make. The Supreme Court has further noted that any suspension must be accompanied by appropriate procedural protections which comport with Due Process. The Court in Dacus indicates that any suspension, even a temporary one, must be accompanied by Due Process.

We share your concern about the manner in which grant funds may have been handled -- a concern also evidenced by the Circuit Court in directing the verdict in the criminal case. There, the Court specifically observed that it did not "condone" the uses of grant funds, but did conclude that the uses were not criminal in nature. Since the pending criminal prosecutions have now ended, it may be appropriate for some qualified state agency (e.g. Division of Local Government) to review the process by which Rural Development grants are handled by McCormick County. Also, there may be a need for further legislative action to clarify the use of grant funds. These legislative and administrative reviews could provide for the smooth administration of these grant monies and ensure the integrity of these funds administered by local governments.

With best regards, I am

Sincerely yours,


T. Travis Medlock
Attorney General

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