

1982 S.C. Op. Atty. Gen. 11 (S.C.A.G.), 1982 S.C. Op. Atty. Gen. No. 82-9, 1982 WL 154979

Office of the Attorney General

State of South Carolina

Opinion No. 82-9

March 2, 1982

***1 Attention: Mr. Marion Ey Research Assistant**

Honorable Jennings G. McAbee
Member
House of Representatives
333B Blatt Building
Columbia, South Carolina 29211

Dear Mr. McAbee:

Your letter of February 25, 1982, requests an opinion upon the following proposed provisions to be included in the 1982–83 Appropriations Act.

1. Whether it would be violative of any constitutional or statutory language to include the following provision in the 1982–83 Fiscal Year Budget Bill:

That the base pay for the Governor, Lieutenant Governor, Commissioner of Agriculture, Secretary of State, Attorney General, Treasurer, Superintendent of Education, Comptroller General and Adjutant General, shall be adjusted annually consistent with the percentage base increase given to regular State employees for the same year.

2. Whether it would be violative of any constitutional or statutory language to include the following provision in the 1982–83 Fiscal Year Budget Bill:

That the base pay for the Governor, Lieutenant Governor, Commissioner of Agriculture, Secretary of State, Attorney General, Treasurer, Superintendent of Education, Comptroller General and Adjutant General, shall be adjusted annually consistent with the percentage base increase given to regular State employees for the prior year.

3. Whether it would be violative of any constitutional or statutory language to include the following provision in the 1982–83 Fiscal Year Budget Bill:

That the base pay for the Governor, Lieutenant Governor, Commissioner of Agriculture, Secretary of State, Attorney General, Treasurer, Superintendent of Education, Comptroller General and Adjutant General, shall be adjusted annually, pursuant to a fixed percentage rate set prior to the commencement of the terms of such officers.

It is my understanding that these provisions would be enacted as a part of the 1982–83 fiscal budget but that such increase would not take effect until the commencement of the officers' terms, which would begin after the November 2, 1982 election.

I advise that, in my opinion, any of these provisions could properly be incorporated in the law and would be constitutionally adequate, provided they were adopted as permanent law prior to the commencement of the terms of the officers identified. This position is made clear by [State ex rel. McLeod v. Mills, 256 S.C. 21, 29, 180 S.E.2d 638](#), in which case a challenge was instituted by me pursuant to the questions presented by the adoption of similar provisions in 1969 and 1970. The difficulty is presented by the fact that the so-called constitutional officers each have terms which do not coincide with the fiscal year in which the terms

begin, but each of these terms begins, instead, in the early part of January of the year following the election of the officers. At the present time, that will be the early part of January 1983. That time occurs at mid-point during the fiscal year for the State, and the Appropriations Act, which you are now engaged in preparing, will cover the period July 1, 1982, to June 30, 1983. The Constitution prohibits the increase of the salary of a constitutional officer during his term but the appropriations are made for the fiscal year, which includes one-half of the old term and one-half of the new term. The simplest way to meet the problem would appear to be to appropriate monies for the first six months of the fiscal year at the rate which the constitutional officer received at the beginning of his term and to provide that at the beginning of the new term in January, the salary would then be in accordance with a permanent statute fixing the salary at whatever rate of compensation the General Assembly chose to establish. Any of the methods of fixing the salary for the next four years as outlined in your letter are, as noted, constitutionally acceptable.

*2 As the Supreme Court noted in McLeod v. Mills, the constitutional prohibition against changing the salary of these officers during their terms of office does not require that their salaries be uniform throughout their terms.

In reply to your specific questions, therefore, I advise that any of the proposals for fixing the salaries of the officers may be constitutionally made, provided there is an effective statute adopted before the beginning of their terms of office providing for the method of fixing the salaries in the manner the General Assembly chooses to select.

Very truly yours,

Daniel R. McLeod
Attorney General

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