

1981 WL 157926 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 19, 1981

***1 RE: Opinion Concerning Defense of the Indigent's Fund**

Mr. Louis L. Rosen
Assistant Director
South Carolina Court Administration
South Carolina Supreme Court
Post Office Box 11788
Columbia, South Carolina 29211

Dear Mr. Rosen:

You have requested an opinion of this office concerning the entitlement of your office to funds during fiscal year 1981-82 for defense of indigents. [See § 17-3-10, et seq., Code of Laws of South Carolina](#), 1976, as amended. Section 17-3-70 provides for appropriations for maintenance of defender corporations and compensation of appointed private counsel in the defense of indigents; moreover, state funds for this purpose are managed and disbursed by the Court Administrator's Office.

The controversy here centers around the entitlement of the Court Administrator's Office for defense of indigent's funds for July, 1981. The State General Appropriations Act for fiscal year 1981-82 (H2461, R232), did not become effective until July 28, 1981. Section 4 of the 1981-82 General Appropriations Act contains a proviso apportioning funds appropriated for defense of indigents among the various counties in this state based upon the official United States census for 1980. The appropriation for the same purpose in the 1980-81 General Appropriations Act (Act No. 517, Acts and Joint Resolutions of South Carolina, 1980), provides for apportionment of such funds in a similar manner but based upon the official United States census for 1970. In that the 1981-82 General Appropriations Act was not effective upon the commencement of the current fiscal year, the General Assembly extended the effective date of the 1980-81 General Appropriations Act pursuant to Joint Resolutions (H3032, R205; H3033, R206). Thus, your specific question is whether the appropriations of the Court Administrator's Office for defense of indigents for the period of July, 1981 is governed by the 1980-81 Act and the 1970 census or by the 1981-82 Act and the 1980 census.

Even though R205 and R206 of 1981 extended the application of the 1980-81 General Appropriations Act into the current fiscal year, those resolutions are silent on whether the General Assembly intended to alter the statutory fiscal year. Section 11-9-80 clearly specifies that the fiscal year for the State of South Carolina shall commence on July 1 and end June 30 each year; moreover, the title to the 1980-81 General Appropriations Act clearly indicates that it was for the purpose of meeting ordinary expenditures of the state for the fiscal year beginning July 1, 1980. The title to the 1981-82 General Appropriations Act states in part, 'To Make Appropriations To Meet the Ordinary Expenses of the State Government for the Fiscal Year Beginning July 1, 1981 . . .' Thus, the only reasonable conclusion to be drawn is that the General Assembly did not intend last year's Appropriation's Act to alter the state fiscal year, and the General Assembly intended the current Appropriations Act to be generally applicable on July 1, 1981. In order to implement the 1981-82 General Appropriations Act from July 1, 1981, the Act must be given a general retrospective application.

***2** The two above cited resolutions extending the application of the 1980-81 Appropriations Act were enacted for the purpose of allowing the state to carry on its normal functions and meet necessary expenditures. The 1981-82 General Appropriations Act, in that it is to meet state expenses from July 1, 1981, supersedes the mentioned resolutions, and appropriations in the 1981-82 Act should be made available to meet ordinary state expenses from July 1, 1981. Therefore, the opinion of this office is

that the Office of the Court Administrator is entitled to receive funds for defense of indigents for fiscal year 1981-82 from July 1, 1981, based upon the official United States census for 1980 as provided in the current Appropriations Act. One cautionary note must be inserted at this point. While this opinion states that the current General Appropriations Act should generally be applied retrospectively to July 1, 1980, this may only be accomplished in the absence of any specific constitutional prohibition. I specifically call your attention to Article 3, § 30, Constitution of South Carolina, 1895, as revised. This constitutional provision prohibits the grant of extra compensation, fees or allowances to any public officer, agent, servant or contractor after services have been rendered. Thus, caution should be exercised not to expend funds under the current General Appropriations Act for the period from July 1, 1981 through July 27, 1981 in violation of the constitutional provision just described. [See *State ex rel. McLeod v. McLeod*, 270 S.C. 577, 243 S.E.2d 466 \(1978\).](#)

Sincerely,

Paul S. League
Assistant Attorney General

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