

1980 WL 120689 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 28, 1980

\*1 William E. Whitney, Jr., Esquire

Union County Attorney

Long and Whitney

203 West South Street

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Union, South Carolina 29379

Dear Billy:

You have requested an opinion whether certain provisions in the 1979-80 Union County Appropriation Ordinance may be changed. One of those provisions states that 'If the salary of the Clerk of Court is subsidized by the State, then the \$900 adjustment raise will be deleted and automatically revert back to the county general fund.' A similar provision relates to a \$600 raise for the Probate Judge. Subsequent to the enactment of this ordinance and after the beginning of the 1979-80 fiscal year for the County, the General Assembly enacted § 8 of Part I of the Appropriation Act. Act No. 199, South Carolina Acts and Joint Resolutions, 1979. That section appropriated a sum of money to make a \$1,500 salary supplement to each Clerk of Court and each Probate Judge in every county. The section further provided that 'any reduction by any county in the salary of the Clerks of Court or the Probate Judge . . . shall result in a corresponding decrease of funds provided to that county by the State.' Id. The result of the subsequently enacted State Appropriation Act when read in conjunction with the County Appropriation Ordinance is to cause an unintended \$900 reduction in the salary of the Clerk of Court and a \$600 reduction in the salary of the Probate Judge.

Ordinarily when an annual appropriation ordinance is required by statute, that ordinance may not be changed, after the beginning of a fiscal year, by an ordinance changing the appropriation. *MCQUILLIN, MUNICIPAL CORPORATIONS*, § 39.66; [Cummings v. Scranton](#), 348 Pa. 538, 36 A.2d 473, 475 (1944). However, under the Home Rule Act a county is permitted to 'transfer funds appropriated in the annual budget for purposes other than as specified in such annual budget when such transfers are approved by the council.' § 4-5-140, *Code of Laws of South Carolina*, 1976 (as amended). Since the salary adjustment raises have already been appropriated by the council but later reverted back to the general fund, the council may be resolution make a line item transfer out of the general fund to pay the salary adjustment raises for these officials. A resolution such as this would effectuate the purpose of the original County Appropriation Ordinance insofar as the county did not anticipate the provision in the State Appropriation Act which effectively denied the Clerk of Court and the Probate Judge the raises intended by the county.

Sincerely yours,

David C. Eckstrom

State Attorney

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