

1980 WL 120913 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 6, 1980

***1 Re: Money Transfer Authorization Agreement**

The Honorable James H. Windham
Deputy State Treasurer
P. O. Drawer 11778
Columbia, South Carolina 29211

Dear Mr. Windham:

Your letter of October 3, 1980, to Victor S. Evans has been referred to me for an appropriate response. I have reviewed the Agreement, and would like to make the following comments for your consideration:

1. In paragraph eight (8) of the Agreement the State agrees to hold C & S harmless and indemnify it as a result of any claims brought as a result of authorized transfer requests or by the refusal of C & S to act upon requests not properly made in accordance with the Agreement. First, I do not see why C & S Bank would need this hold-harmless clause in the first place. If they are making a transfer pursuant to our request, I do not see how they could be held responsible. Secondly, we have been taking the position that the State cannot agree to come in and defend or hold harmless third parties. (For example, we have offered the opinion that the State cannot give general warranties in real estate deeds, because this would require the State to defend title on behalf of subsequent property owners.) Paragraph eight (8) would require the State to come in and defend and hold harmless C & S from any claims. Furthermore, I think it is arguable that this indemnity and hold harmless provision might run afoul of [Article X, Section 6 of the South Carolina Constitution](#) as pledging the credit of the State for the benefit of third parties. Therefore, I would recommend that paragraph eight (8) be deleted from the agreement.

2. As to paragraph seven (7) of the Agreement, we are in effect releasing C & S Bank as to any special or consequential damages resulting from their negligent acts. While I do not believe that such release would be contrary to State law, we might be giving up a valuable legal right should their negligence result in extraordinary losses to the State. This is, of course, merely a matter of contract, which can be negotiated by the parties. I am not sure that C & S would be willing to give up this right, but it is a matter which you might desire to negotiate with them.

3. I would recommend the inclusion of a provision that should it be necessary for the customer to bring legal action as a result of C & S Bank's negligence in performing the terms of the Agreement, C & S Bank agrees to pay customer's expenses (including reasonable attorney fees).

4. My last comment is with regard to the deletion of paragraph four (4). I think it might be unwise to delete this provision, since I think that the recording of telephone conversations could be invaluable in a subsequent investigation should funds be illegally or improperly transferred from the State's accounts. I would recommend leaving this provision unless you have a very sound reason not to.

If I can be of further assistance to you in this matter, please do not hesitate to contact me. With cordial best wishes, I am

Very truly yours,

***2** Richard B. Kale, Jr.
Senior Assistant Attorney General

ATTACHMENT

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
1980 WL 120913 (S.C.A.G.)

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.