

1979 S.C. Op. Atty. Gen. 103 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-79, 1979 WL 29084

Office of the Attorney General

State of South Carolina

Opinion No. 79-79

June 12, 1979

*1 TO: Mr. Roland M. Crawford, Director

SUBJECT: Disbursement of Monies Paid to South Carolina State Firemen's Association Pursuant to § 38-57-180.

The charge levied upon foreign fire insurers must be disbursed by the State Treasurer to the county treasurer as provided by § 38-57-160. The county treasurer must distribute the funds so received as directed by §§ 38-57-170 and 38-57-180; five (5%) percent to the S.C. State Firemen's Association.

Insurer Licensing and Taxation
Department of Insurance

QUESTION:

The State Treasurer is required to pay over to the county treasurers certain sums collected by the South Carolina Department of Insurance. Five per cent of that amount must be paid by the county treasurer to the South Carolina State Firemen's Association. Under such facts can the Comptroller General withhold the five per cent from the disbursement to the county treasurer and remit the same directly to the South Carolina State Firemen's Association?

APPLICABLE LAW:

§§ 38-57-110, 38-57-120, 38-57-160, 38-57-170, 38-57-180 and chapter 3 of Title 11 of the South Carolina Code of Laws.

DISCUSSION:

The charge is levied upon foreign fire insurance companies and is paid to the Chief Insurance Commissioner. Section 38-57-160 provides in part that:

'The State Treasurer shall pay over the amount collected * * * to the treasurers of the counties to which such premiums are allocated * * *.'

Sections 38-57-170 and 38-57-180 provide for the distribution of funds so paid. The latter section directs that five per cent of the proceeds be turned over to the South Carolina State Firemen's Association. The thought was expressed that if the Comptroller General could withhold five per cent and pay the Firemen's Association directly, the county treasurer's office would benefit. While this procedure may be desired, it is not provided by statute. The statute specifically provides the procedure and must be followed:

'In general, the powers and duties of officers are prescribed by the constitution or by statute, or both, and they are measured by the terms and necessary implication of the grant, and must be executed in the manner directed and by the officer specified. If broader powers and desirable, they must be conferred by the proper authority. They cannot be merely assumed by administrative officers, nor can they be created by the courts in the proper exercise of their judicial

functions. No consideration of public policy can properly induce a court to reject the statutory definition of the powers of an officer. * * *' 63 Am. Jur. 2d, Public Officers and Employees, § 263. See also Art. VI, § 7 of the S. C. Constitution; Bank of Johnston v. Prince, 136 S.C. 439, 134 S.E. 387; Evans v. Beattie, 137 S.C. 496, 135 S.E. 538.

Chapter 3 of Title 11 of the Code provides in part for the powers of the Comptroller General. We do not find authority in this chapter or in other statutes for the Comptroller General to change the legislative direction for the distribution of the funds.

CONCLUSION:

*2 The charge levied by §§ 38-57-110 and 38-57-120 must be disbursed by the State Treasurer to the county treasurer as provided by § 38-57-160. The county treasurer must distribute the funds so received as directed by §§ 38-57-170 and 38-57-180.

Joe L. Allen, Jr.
Deputy Attorney General

1979 S.C. Op. Atty. Gen. 103 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-79, 1979 WL 29084