

1979 S.C. Op. Atty. Gen. 118 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-86, 1979 WL 29091

Office of the Attorney General

State of South Carolina

Opinion No. 79-86

June 29, 1979

***1 SUBJECT: County Treasurer—Payment and Custody of County Funds.**

The offices of the State Treasurer and the Comptroller General should disburse funds appropriated to Richland County to the County Treasurer and not to the County Finance Department.

TO: Mr. Ernest W. Cooler
Assistant Comptroller General

QUESTION:

We are advised that the Richland County Council by resolution transferred ‘certain functions from the County Treasurer’s office to the Richland County Finance Department’. By reason of such, request has been made to the offices of the State Treasurer and the Comptroller General that funds distributed by those offices be paid to the Richland County Finance Department. As understood, such funds have historically been disbursed to the County Treasurer. The question is whether the State Treasurer and the Comptroller General should remit such payments to the Treasurer or to the Finance Department.

APPLICABLE LAW:

[Article X, Section 8 of the South Carolina Constitution](#); § 4–9–30(8), Chapter 13 of Title 4, § 4–9–630 and § 4–9–650 of the 1976 Code of Laws.

DISCUSSION:

We must first consider our Constitution that provides:

‘Money shall be drawn from the treasury of the State or the treasury of any of its political subdivisions only in pursuance of appropriations made by law.’ [Article X, Sec. 8](#). (Emphasis added)

We do not find a statutory definition of a county treasurer nor a case where our courts have defined the office. [Webster’s New Collegiate Dictionary](#), however, defines a ‘treasurer’ as:

‘One trusted with charge of a treasure or treasures; specif: a. A guardian of a collection of treasures; a curator. b. An officer who receives the public money, takes charge of it, and disburses it upon orders made by the proper authority. c. A similar official in charge of the funds of an organization, society, or corporation.’ (Emphasis added)

‘Treasury’ is also defined by the same authority as:

‘1. A place in which stores of wealth are deposited; esp. a place where public revenues are deposited, kept and disbursed; hence, the place of deposit and disbursement of any funds. 2. That department of a government which has charge of the finances. 3. A repository for treasures; also, a thesaurus.’ (Emphasis added)

Black's Law Dictionary defines a 'treasurer' as:

'An officer of a public or private corporation, company, or government, charged with the receipt, custody, and disbursement of its moneys or funds. See State v. Eames, 39 La. Ann. 986, 3 So. 93; In re Millward-Cliff Cracker Co. is Estate, 161 Pa. 167, 28 A. 1072; Jones v. Marrs, 114 Tex. 62, 263 S.W. 570, 574.' (Emphasis added)

The Supreme Court of North Carolina in the case of Gardner v. Board of Trustees, etc., 226 N.C. 465, 38 S. E. 2d 314, held that:

'A treasurer is one in charge of a treasury, and a treasury is a place where public funds are deposited, kept and disbursed. Webster.' See also Words and Phrases, Volume 42A.

*2 In connection with the above it should be noted that § 4-13-110 provides that:

'It shall not be lawful for any county treasurer to pay an order of the governing body of the county unless drawn in conformity with § 4-13-100. The Comptroller General, in case of any violation of the provisions of said section which may come or be brought to his notice, shall report the offender to the Attorney General for prosecution and to the Governor for dismissal.'

Some of the funds appropriated for counties by State law must by the specific language of the statute be paid to the Treasurer. In example, reimbursement for the homestead exemption, § 12-37-270. Clearly, where such provision exists the funds should be remitted as mandated.

Additionally, Chapter 13 provides the procedure for payment of claims against the county and the same are to be paid by the Treasurer. The claims cannot be paid as prescribed unless the Treasurer has custody of the funds.

Section 4-9-30(8) provides, however, that the governing body shall have authority to:

'(8) * * * provide for an accounting and reporting system whereby funds are received, safely kept, allocated and disbursed.'

This language must be considered in the light of the first paragraph of § 4-9-30 that provides:

'Under each of the alternate forms of government * * * each county government within the authority granted by the Constitution and subject to the general law of this State shall have the following enumerated powers * * *.' (Emphasis added)

Section 4-9-630 further provides that the Administrator:

'(5) * * * supervise the expenditure of appropriated funds;'

Such is, however, limited by § 4-9-650 that provides:

'With the exception of organizational policies established by the governing body, the county administrator shall exercise no authority over any elected officials of the county whose offices were created either by the Constitution or by the general law of the State.'

The office of the Treasurer is created by § 12-45-10 and is occupied in Richland County by an elected official.

The powers of the council are thus subject to the Constitution and general law. Both relate to a treasury and the statute specifically provides that claims against the county are to be paid by the Treasurer. As stated, such cannot be done if the Treasurer does not have custody of the funds.

All the statutory provisions must, if possible, be harmonized. [Independence Ins. Co. v. Independent Life & Acc. Ins. Co.](#), 218 S.C. 72, 61 S. E. 2d 399. In order that such be done and effect given to all statutes, the County Treasurer should be the custodian of the county funds and be required to pay the same out as mandated by the Constitution and the statute.

CONCLUSION:

The offices of the State Treasurer and the Comptroller General should disburse funds appropriated to Richland County to the County Treasurer and not to the County Finance Department.

Joe L. Allen, Jr.

*3 Deputy Attorney General

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