

1979 WL 43548 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 29, 1979

*1 Harris A. Marshall, Jr., Esquire
Orangeburg County Attorney
Post Office Box 21
Orangeburg, South Carolina 29115

Dear Mr. Marshall:

You have requested an opinion concerning certain language contained in House Bill No. 3081 recently enacted by the South Carolina General Assembly with respect to the duties of the Orangeburg County Treasurer. Section 3 of House Bill No. 3081 provides in part as follows:

Beginning September 1, 1979, the Orangeburg County Treasurer shall notify each school district of the county as to the availability of funds for the district as they are received. Upon the warrant or order of three members of the district board, signed by such trustees and certified by a person authorized by the district board, the treasurer shall release available funds to the district in accordance with procedures agreed between the treasurer and the board.

As you know, our Office has issued several opinions in the recent past concerning the duties and responsibilities of county treasurers now that the provisions of Act No. 283 of 1975, the 'home rule' legislation, have become effective. On April 5, 1978, we advised the Aiken County Treasurer that, *inter alia*, the Aiken County School District is not entitled to have disbursed to it all of the school funds as they are collected and received but, instead, is supposed to draw upon those funds as the need arises. Several general law provisions require the county treasurer to disburse school funds only upon warrants which must meet certain specifications [[§ 59-69-220, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended], to keep a cash book of school funds, including therein the amount of each warrant paid by him during the fiscal year [[§ 12-45-200, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended], to make a monthly report to the county superintendent of education (the school district boards of trustees in Orangeburg County) of the amounts of collections and disbursements made by him, as well as the balance remaining in his hands to the credit of each school district [[§ 12-45-200, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended] and 'to carry forward all sums . . . for school purposes and unexpended to the next fiscal year and credit the same to the school districts respectively, for which they are apportioned.' [[§ 59-69-250, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended]. These statutes intend that school funds are to be expended only as needed and are not to constitute a source of investment revenue for the schools. *Cf.*, 1971-72 Ops.Atty.Gen. No. 3396. On May 26, 1978, our Office advised the State Comptroller General that the county treasurer cannot disburse county funds in a lump sum without violating [Section 4-13-110, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended. And on June 27, 1978, our Office advised you that the county treasurer can invest unexpended school funds which he is required to carry forward to the next fiscal year pursuant to [Section 12-45-220, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended, and that any interest earned on invested school district funds belongs to the particular school district.

*2 If Section 3 of House Bill No. 3081 were interpreted as being in conflict with the various general law provisions hereinabove cited, then, if challenged, it might well be found to be unconstitutional as violative of Article III, Section 34, subdivision ix of the South Carolina Constitution and, perhaps, of Article VIII, Section 7 thereof, notwithstanding the holding of the South Carolina Supreme Court in [Moye v. Caughman](#), 217 S.E.2d 36 (1975). See, e.g., [McElveen v. Stokes](#), 124 S.E.2d 592 (1962). I think, however, that the provisions of Section 3 of House Bill No. 3081 and the general law provisions hereinabove cited can be harmonized as follows: the Orangeburg County Treasurer and each district

board can agree to administrative (or other) procedures related to the disbursement of school district funds but they may not alter general law provisions in doing so. For example, the Orangeburg County Treasurer and a district board cannot agree to a procedure that would infringe upon his duty to keep a cash book containing ‘the amount of each warrant paid by him’ during the fiscal year both on county school funds and on each school district’s funds. See, [§ 12-45-200, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended. Moreover, in my opinion, they cannot agree to a lump sum disbursement of all school district funds to the district board at one time; indeed, Section 3 of House Bill No. 3081 itself does not seem to contemplate such a procedure inasmuch as it speaks to the disbursement of school district funds upon the warrant or order of three members of a board and, presumably, the legislature did not intend to vest the authority to order the disbursement of all of that school district’s funds at one time in only three members of a board.

Finally, you have inquired whether or not House Bill No. 3081 can validly impose an additional financial burden upon the county treasurer’s office and, thus, upon Orangeburg County in a manner consistent with ‘home rule.’ Assuming without deciding that it does impose an additional financial burden (it might be that the agreed-on procedures will decrease the treasurer’s duties), inasmuch as the South Carolina Supreme Court has determined that the county treasurer also acts as the treasurer for each school district within his county [[Hay v. Leonard](#), 46 S.E.2d 653 (1948)], my opinion is that House Bill No. 3081 can validly do so.

With kind regards,

Karen LeCraft Henderson
Senior Assistant Attorney General

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