

1979 WL 43559 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
September 5, 1979

*1 Honorable Earle E. Morris, Jr.
Comptroller General
Wade Hampton Office Building
Columbia, South Carolina 29211

Dear Mr. Morris:

This will reply to your letter of August 24, 1979, requesting the opinion of this Office on several matters involving provisos to Section 8 of the 1979-80 Appropriations Act. These questions concern the allocations to counties of funds for Clerks of Court and Probate Judges.

The pertinent part of the two provisos in question is as follows:

. . . of the \$3,000 appropriated in this section for each . . . county judge of probate [clerk of court] one-half shall be paid to each . . . probate judge [clerk of court] as a salary supplement and the other one-half shall be used by each . . . probate judge [clerk of court] to secure additional clerical help . . .

For clarity, we will state the questions and our opinion as to each in the order set forth in your letter.

(1) Can the appropriations for the Clerks of Court and the Probate Judges be paid to them in either a single lump sum or in multiple payments? Who decides the method?

A. The salary supplements for the Clerks of Court and Probate Judges should be paid in increments as a part of the regular salary payment, and not in a lump sum of \$1,500.00. For example, if the incumbent left the office for any reason, his successor would be entitled to the incremental payments for the remainder of the year.

(2) Are the salary supplements for the Clerks of Court and Probate Judges subject to federal and state income tax withholding payments and to social security and state retirement payments?

A. The salary supplements would be subject to federal and state income tax withholding and to social security and state retirement payments, as a part of the total salary.

(3) Do local governments disbursing these funds to Clerks of Court and Probate Judges have authority to deduct the employer's share of fringe benefits from the salary supplements?

A. The local governments do not have authority to deduct the employer's share of fringe benefits from the salary supplements.

(4) Can the funds appropriated for additional clerical help be used to supplement the salary of one or more employees who were already employed on July 1, 1979?

A. The funds appropriated for additional clerical help may be used only for that purpose and not to supplement the salary of present employees.

(5) Can the funds appropriated for additional clerical help be obligated and paid under contract for performance of clerical work without being treated as salaries and subject to withholding payments and fringe benefit payments?

A. Funds appropriated for additional clerical help may be paid for contract services or as a salary supplement for additional clerical help employed after July 1, 1979. If it is utilized as a salary supplement, it would be subject to the usual withholding taxes and fringe benefit payments.

(6) Is the penalty proviso in the Appropriations Act constitutional?

*2 A. The penalty proviso which prohibits the county from reducing the salaries of clerks of court or probate judges is valid. It is not a constitutional question because the General Assembly has plenary power to place conditions on any appropriations.

(7) Can a county refuse to accept the appropriations for the Clerk of Court and Probate Judge or for the additional clerical help?

A. A county may not refuse to accept the appropriations. They are obligated by law to carry out the mandates of the General Assembly which are constitutionally enacted.

(8) If a county amended its appropriation bill retroactive to July 1, 1979, to absorb these pay increases for the Clerk of Court and Probate Judge but to maintain the level of pay of all elected officials and other county employees at the rate contemplated by the County Personnel Policy Act, would this be a violation of the penalty provisions of Section 8 requiring a corresponding decrease of funds provided for the county by the state?

A. A county may not amend its Appropriations Bill to reduce the salary of the Clerk of Court or the Probate Judge below the amount originally set for the year, plus the \$1,500.00 supplement provided by the General Assembly. Any such reduction would violate the constitutional and statutory prohibition against reduction of the salaries of elected officials during their term of office.

We are attaching copies of two recent opinions from this Office raising some of these same questions. We have also reviewed this opinion with Deputy Attorney General Joe L. Allen, Jr., at the Tax Commission, and he concurs in this opinion.

Very truly yours,

Frank K. Sloan
Deputy Attorney General

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