

1978 S.C. Op. Atty. Gen. 128 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-98, 1978 WL 22577

Office of the Attorney General

State of South Carolina

Opinion No. 78-98

May 20, 1978

***1 SUBJECT: Appropriations, S.C. Peanut Board; State agencies, Peanut Board, S.C., appropriations.**

(1) The expenditures S.C. Peanut Board must comply with the regulations of the State Budget and Control Board when made in specified categories such as salaries, travel expense, and other benefits to employees.

(2) The S.C. Peanut Board may expend its funds in any lawful manner when such expenditures are programmatic and approved by the Agriculture Commission.

TO: State Auditor

QUESTION:

(1) Where an employee of the S.C. Department of Agriculture had been assigned, as a part of his official duties, to serve the S.C. Peanut Board, may the Board present that employee with a gift as a symbol of its appreciation upon his resignation from that position?

(2) If the purchase and award of a gift to an out-going employee is not a lawful expenditure, under what circumstances may a commodity board expend funds for such items?

AUTHORITIES:

[Code of Laws of South Carolina, Sections 46-17-10 et seq. \(1976\)](#)

Act No. 219 of 1977

Marketing Order No. 6, South Carolina Code of Regulations, No. 5-160 et seq. (1976)

2A Sutherland, Statutory Construction (4th Ed., 1973).

DISCUSSION:

1. Marketing Order No. 6 for South Carolina Peanuts, [Regulation No. 5-160](#) et seq., S.C. Code of Regulations (1976), was issued and became effective on July 1, 1975. Under Order No. 6, the S.C. Peanut Board was established with all of the powers and duties authorized for such commodity marketing boards by the South Carolina Agricultural Commodities Marketing Act (Codified as [Section 46-17-10 et seq. of the S.C. Code of Laws \(1976\)](#)).

Under the Order, a levy of two dollars per ton, payable to the Agriculture Commission of S.C., was assessed each producer. Section 46-17-340 provides for the use of collected assessments and states that "Monies collected by the Commission pursuant to any marketing order ... shall be used by the Commission and the commodity board only for

the purpose of paying for expenses and costs arising in connection with the administration, amendment or termination of such order ... (emphasis added).”

In arriving at a correct interpretation of the Commodities Marketing Act and the impact of Section 46-17-340 upon the Peanut Board's activities, it is necessary to attempt to “determine the intent of the legislature,” which is a fundamental rule of statutory construction. However, where, as here, the legislature has prefaced its act with a statement of policy and purpose, it is also appropriate that the considerations surrounding the purpose which the legislation is supposed to accomplish are reviewed as a means of obtaining additional insight. 2A Sutherland, Statutory Construction, Section 45.09 (4th Ed., (1973).

Section 46-17-30 sets forth the policy of the General Assembly in this regard. Of particular import is Paragraph (b)(4) which evidences the Assembly's desire that agricultural producers be availed of greater marketing opportunities both in this country and abroad. Paragraph (b)(6) reflects the desire that the purchasing power of agricultural producers be restored and maintained. This is in fact the promotion of the sales or business and financial well-being of a segment of the producers of goods and services in South Carolina.

*2 The unusual nature of a commodity board and its intended activities is borne out by the unusual nature of the commodity board assessments, in that, unlike other funds which flow into the state treasury through any of the State's boards, departments or institutions, these funds are not paid by the public-at-large in the form of a general income or sales tax nor are they collected from the recipients of various forms of government regulatory services such as the purchasers of permits or licenses. In fact, the commodity levy is assessed against a group of citizens engaged in a particular occupation who have by their voluntary expression of support elected to contribute to a fund established to help themselves to develop, expand and improve the market for their product.

As further evidence of the non-public nature of the funds, the General Assembly in 1968 directed the Agriculture Commission through Section 46-17-370 to deposit all monies collected pursuant to the Agricultural Commodities Marketing Act in separate accounts. This direction to handle these funds in a specific manner is bolstered by a direction in Section 46-17-350 that any funds remaining after the termination of a marketing order be withdrawn from the approved depository and then paid into the state treasury.

A third, but equally important, indication of the unique character of the collected assessments is found in the fact that a peanut producer may, as authorized by Section 46-17-350 and [Regulation 5-164\(5\)](#), apply for and receive a complete refund of all assessments which have been paid to the Commission and the commodity board during any marketing season.

It can be concluded on the basis of these statements of policy and other indicators of characteristics that the activities which the Peanut and other commodity boards could reasonably be expected to engage in are unique when compared with other types of activities ordinarily encountered in the course of the operations of the State government and, therefore, that the General Assembly intended that only specifically provided restraints be placed on the use of any collected commodity board assessments.

It is the opinion of this Office, therefore, assuming that the gift-giving is a demonstrable part of the administration of Order No. 6, that the Peanut Board would be acting within lawful parameters in obtaining an item for the purpose of making a gift. However, in Section 127 of Part 1 of Act No. 219 of 1977, it is provided “That the expenditure of funds by agencies of the State Government from sources other than General Fund appropriations shall be subject to the same limitations and provisions of law applicable to the expenditure of appropriated funds with respect to salaries, wages ... and other allowances or benefits for employees.”

Due to this provision of the appropriations act, an expenditure by the Peanut Board would necessarily be subject to the policies and regulations of the State Budget and Control Board when, as in this case, the expenditure would inure to the benefit of a state employee. The State Budget and Control Board; we are advised, has on numerous occasions ruled on questions such as the one presented here and has established a policy that such gifts are not allowable. In fact, in deciding such a question the Budget and Control Board would be bound to take notice of and implement Section 129, Part 1 of Act 219 of 1977 which states “That salaries paid to officers and employees of the State, ... shall be in full for all services rendered, and no perquisites of office or of employment shall be allowed in addition thereto, ...”

*3 Therefore while the Peanut Board would otherwise be legally empowered to buy an item and present it, as donor, to a recipient, the fact that the donee is or was in the employ of the state would make the gift violative of the policy of the State Budget and Control Board and Section 129 of the 1977 appropriations act regulating additional benefits to state employees. It is the opinion of this Office, therefore, that such a gift could not lawfully be made by the Peanut Board due to the ineligibility of the donee.

2. With reference to the second part of the question presented, it should be noted that the Peanut Board is bound in its proposed expenditures by the Appropriations act when the expenditures fall into a category for which a special provision had been made, such as, “other benefits to state employees.”

However, were the Board to contemplate making a purchase of an item such as a trophy to be used, for example, as an award in a “Peanut Recipe Cooking Festival” or other promotional activity, then the purchasing decision would be wholly within the discretion of the Peanut Board and its supervisory body, the Agriculture Commission of South Carolina. Section 46–17–280 states that the Agriculture Commission will make the determination as to whether the actions of the Board conform with the purposes of the Commodities Marketing Act and is directed to approve board actions on the basis of such compliance.

It is therefore to be concluded that any expenditure made from the funds collected under Marketing Order No. 6 is to be deemed proper when it meets the following criteria: (1) it has received the approval of the Agriculture Commission, (2) it can be categorized as programmatic in nature, (3) it does not fall into one of the areas enumerated in the Appropriations act as being prohibited, or regulated by the State Budget and Control Board, e.g., salaries, travel expense, and other allowances or benefits for employees, and (4) it does not involve a use patently illegal, that is, constitutes a purchase prohibited by state law such as that of alcoholic beverages.

CONCLUSION:

(1) The S.C. Peanut Board may not make a gift from appropriated funds or commodity assessment funds to a state employee assigned to it, as such gifts are prohibited by Act No. 219 of 1977 as “other benefits.”

(2) The Peanut Board may make purchases of any items to be used for programmatic purposes, if the purchase is not illegal, and has been approved by the Agriculture Commission.

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