

1978 WL 35301 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 15, 1978

*1 Honorable Grady L. Patterson
State Treasurer
Wade Hampton Office Building
Columbia, S.C.

Dear Mr. Patterson:

Inquiry is made as to whether it is proper to make payments to the Chairman of the Board of Financial Institutions as appropriated under Section 77, on line item appropriations, for the Chairman in view of the fact that the Chairman is also the State Treasurer.

[Section 34-1-20, Code of Laws of South Carolina](#), 1976, as amended provides:

The State Board of Financial Institutions shall be composed of nine members, one of whom shall be the State Treasurer, as an ex officio member, who shall be Chairman . . .

The General Assembly designated the State Treasurer to serve in the additional position of Chairman of the Board of Financial Institutions. The Chairman's supervisory duties and responsibilities resulted in the General Assembly providing an appropriations by line items for the Chairman, in addition to his compensation as State Treasurer. Any laws to the contrary are suspended each year since the annual appropriations acts provide:

All Acts or parts of Acts inconsistent with any of the provisions of Part I of this Act are hereby suspended for the fiscal year . . .

It is the opinion of this Office that the appropriation in Section 77, Act No. 219 (Appropriations Act 1977), Acts and Joint Resolutions, made for the Chairman is proper, notwithstanding the Chairman is also the State Treasurer.

In the 1977 Act the line item in Section 77 provides an allowance for the Chairman of \$2,986.00, which is clearly compensation, and does not require item justification as would 'expense' allowance. Under the decision in [State ex rel. McLeod v. Mills](#), 256 S.C. 21, 180 S.E.2d 638 (1971), the General Assembly clearly has the authority to make such provision.

We find no expression by the South Carolina Supreme Court directly on the question, but the general rule is stated at 67 C.J.S. [Officers](#), Sec. 95:

'[Constitutional] Prohibitions against increase or decrease in compensation * * * do not operate to prevent a change in compensation because of a change in duties which are extrinsic to the office and not incidental thereto.'

When the General Assembly created the Board of Financial Institutions, chairmanship thereof was not intrinsic to the duties of the office of State Treasurer, and was therefore an additional position 'which could have been as appropriately performed by any other person' designated by the act. See, [Land v. Lewis](#), 299 Ky. 866, 186 SW2d 803.

The constitution of West Virginia, contains language inhibiting changes in officer's compensation during their terms of office very similar to [Article VI, Sec. 7, of the S. C. Constitution](#). Their Supreme Court of Appeals has consistently held:

Where the duties newly imposed on a public official by the legislature are not mere incidents of the office which he holds, but embrace a new field, and are beyond the scope and range of the office as it theretofore had existed and functioned, a concurrent legislative increase of salary of such official is not violative of [West Virginia Constitution, article 6, section 38](#), which inhibits the increasing of a public official's salary within his term of office. Syllabus, [Springer v. Board of Education](#), 117 W. Va. 413, 185 S.E. 692 (1936).

*2 See, also, [State ex rel. Goodwin v. Rogers](#), (W. Va.) 217 SE2d 65 (1975).

It is therefore the opinion of this Office that the additional compensation provided for the performance of the duties of a separate office is constitutionally permissible.

Yours very truly,

Frank K. Sloan
Deputy Attorney General

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