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Office of the Attorney General

State of South Carolina

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\*1 Mr. Guy A. Pitts, Jr.  
Director  
Property Tax Division  
South Carolina Tax Commission

### QUESTIONS

1. Under the provisions of Act 208, does the Commission have the authority to require Assessors, Auditors and Appraisers from counties to attend educational courses required by the Commission?
2. Does the wording of Section 14-3703.2 require the Tax Commission to provide sufficient funds for county personnel to attend educational courses required by the Commission?

### STATUTES INVOLVED

Section 65-1605.8, Section 65-64(3) and Section 14-3703.2.

### DISCUSSION

Question 1.

The language of Section 65-1605.8 is clear and provides:

‘All auditors, assessors and appointed appraisers from an assessor’s office must attend educational courses required by the Commission.’ (Emphasis added)

Such persons are under statutory mandate to attend the courses and your inquiry is therefore interpreted as whether the Commission can enforce the attendance. Section 65-64(3) provides authority to the Commission.

‘(3) Shall (a) confer with, advise and direct assessors and boards of equalization as to their duties under the laws of the State and to that end call meetings of all assessors in each county, to be held at the county seat of such county or elsewhere most convenient, or at the Capitol, for the purpose of necessary instruction from the Commission as to the law governing the assessment and taxation of all classes of property and (b) formulate and prescribe rules to govern such assessors and boards of equalization in the discharge of their duties which shall be obeyed and carried out by such assessors and boards of equalization.’

It is understood that the Commission has promulgated regulations of the requirements of the Section and the Commission could therefore require attendance by the persons listed and enforce the same if necessary.

Question 2.

Section 14-3703.2 provides:

‘Whenever the General Assembly shall provide by general law for the use of county personnel, facilities or equipment to implement such general law or rules and regulations promulgated pursuant thereto, the State agency or department responsible for administering such general law shall provide sufficient funds for county implementation from appropriations to that agency or department; provided, that this section shall not apply to construction of or improvement to county capital improvements or other permanent facilities required by the provisions of the general law or regulations promulgated pursuant thereto.’ (Emphasis added)

It is assumed that no funds have been appropriated to the Tax Commission for this purpose and under such circumstances it is doubtful that the term ‘use’ connotes the meaning that a statutory requirement to attend educational courses constitutes ‘the use of county personnel \* \* \* to implement’ the statutory attendance requirement. The purpose of this course is to insure better qualified and informed county officials and employees that have responsibility in property tax matters.

\*2 Additionally, the failure of the General Assembly to appropriate funds for this purpose would have suspended the operations of Section 14-3703.2 had the Tax Commission been required to fund the expenses of such persons' attendance. While not directly in point, it has been held that:

‘I is competent for the Legislature, by means of an appropriation act, to increase or lessen the salary of an officer (where there is no constitutional inhibition), provided the intent to do so may be fairly inferred from the language of the statute. [Belknap v. U. S.](#), 150 U. S. 588, 14 Sup. Ct. 183, 37 L. Ed. 1191, citing cases, including [U. S. v. Langston](#), 118 U. S. 389, 6 Sup. Ct. 1185, 30 L. Ed. 164; [Buchanan v. Treasurer](#), 68 S. C. 415, 47 S. E. 683. When such intention is clearly manifest the appropriation statute is considered to be in conflict with a previous statute fixing such salary and to operate so as to suspend the previous general statute during the currency of the appropriation statute.’ [Brooks v. Jones](#), 80 S. C. 413, 61 S. E. 946. See also [State ex rel McLeod v. Mills](#), 256 S. C. 21, 180 S. E. 2d 638.

The above analogy as being applicable to the question here considered is supported by the provisions of Article 10, Section 9 of the Constitution that provides:

‘Money shall be drawn from the Treasury only in pursuance of appropriations made by law.’

The provisions of Section 14-3703.2 are not considered an appropriation as the budget now specifically provided the Tax Commission is to fund other specific functions. It would not be logical to conclude that the General Assembly intended the level of the Tax Commission's duties and functions be reduced by diverting appropriated funds to other purposes.

#### CONCLUSION

Question 1. The Commission may require the attendance in educational courses of those persons listed in Section 65-1605.8.

Question 2. In the absence of an appropriation the Tax Commission is not required to fund the costs of attendance in education courses of those persons listed in Section 65-1605.8.

Joe L. Allen, Jr.  
Deputy Attorney General

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