

1976 WL 30863 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 15, 1976

**\*1 Re: Legal Questions Concerning Audit of the Title XIX Program of the Department of Social Services (Medicaid)**

Mr. George L. Schroeder  
Executive Director  
Legislative Audit Council  
Bankers Trust Tower  
Suite 500  
Columbia, South Carolina 29201

Dear Mr. Schroeder:

Your letter of September 10, 1976, addressed to the Attorney General has been referred to me for consideration and reply. As I previously explained to you by telephone, your letter of request to the Attorney General had been misplaced within the confines of this Office, and I apologize for this.

I will attempt to answer the questions raised in your letter in the order in which they were presented.

QUESTION 1

Section 71-16 of the 1962 Code permits DSS to carry unexpended funds over from one fiscal year to the next. The Appropriations Act frequently alters DSS' discretion over these funds, and it also restricts the carrying over of funds appropriated for some purposes (such as for personal services).

Does Section 71-16 of the 1962 Code apply in those years in which the Appropriations Act makes no mention of a carryover, or do provisos within the Act have the effect of permanently changing the statute? Is there any carryover if no mention is made within the Appropriations Act after a previous Act has contained a carryover proviso?

ANSWER

Section 71-16, Code of Laws of South Carolina (1962) permits the Department of Social Services to carry unexpended funds forward to succeeding fiscal years. Section 71-16 has not been repealed or amended by the General Assembly. From time to time, Part I of the General Appropriations Act, the temporary provisions, have abrogated or to some extent modified Section 71-16. There is no such provision in the current Appropriations Act.

The rule which is recognized and applied in a situation of this type is found in [Plowden v. Beattie, Comptroller, 185 S.C. 229, 193 S.E. 651](#), wherein the following language from [Brooks v. Jones, 80 S.C. 443](#) is quoted with approval:

'An Appropriations Act, though generally in duration temporarily, has equal force and effect as a permanent statute for the time being, and if approved subsequently to the permanent Act, and there is irreconcilable conflict, the permanent Act is suspended during the time appropriation Act is of force.' (Emphasis added).

The foregoing case was cited in 1941-42 Op. Att'y Gen. 281, which in part concluded that the permanent Act provision is suspended during the time that the appropriations act is in force, and that the annual General Appropriations Act has been deemed by our Supreme Court as a temporary and not a general statute. A copy of the foregoing opinion is enclosed.

Therefore, in answer to your first question, Section 71-16 is in effect at the present time, and has been for all preceding fiscal years where the General Appropriations Act's temporary provisions under Part I did not provide otherwise.

\*2 In addition to the foregoing authorities, I enclose copy of 1925 Op. Att'y Gen. 54, which, insofar as its conclusion is concerned, is still a valid opinion.

#### QUESTION 2

Are Sections 71-9 through 71-12 sufficient to make DSS the single State agency for the administration of Medicaid?

#### ANSWER

In reply to this question, I am enclosing copies of my correspondence and opinions under date of July 21 and July 22, 1976, addressed to The Honorable Ferdinand B. Stevenson, Member of the House of Representatives.

#### QUESTION 3

What is the authority of House Rules concerning the nature of the Appropriations Act format? Does Rule 5.3 require program budgeting for DSS for the administrative expenses (contractual services, etc.)? Does the FY 75-76 Act comply with this rule?

#### ANSWER

The general authority for the implementation of House Rules is found at Article III, § 12 of the Constitution of South Carolina, 1895, as amended. Such provision provides, inter alia, that:

'Each house shall . . . determine its rules of procedure . . .'

With regard to House Rule 5.3, further reference should be made to Article IV, § 21 of the State Constitution, as amended, which sets forth in part that:

'Bills appropriating money out of the Treasury shall specify the object and purposes for which the same are made, and appropriate to them respectively their several amounts in distinct items and sections . . .'

In addition, § 30-205 of the Code of Laws of South Carolina, 1962, further provides for itemization of the Appropriation Act as 'deemed necessary by the General Assembly'.

The proviso portion of House Rule 5.3 questioned reads as follows:

'Provided, further, that appropriation shall be itemized by the major budget classifications established pursuant to law (Personal Service, Contractual Services, Supplies, Fixed Charges, and Contributions, Contingencies, Debt Services, Public Assistance Payments and Distribution to Subdivisions) for each principal operational division of each department and institution.'

The South Carolina courts have recognized that the power of the House of Representatives to determine its rules of procedures is absolute and beyond challenge of any other body or tribunal if the rule adopted does not ignore constitutional restraints or violate fundamental rights, and there is a reasonable relation between mode or method of procedure established by rule and result which is sought to be obtained. State ex rel Coleman v. Lewis, 186 S.E. 625 (1936). Said proviso within House Rule 5.3 appears to be consonant to the Constitutional mandates governing the Legislature. The authority for such a rule is well founded in the Constitution.

With regard to the inquiry concerning whether § 45, Part I, Act 709 of 1976 Acts and Joint Resolutions (General Appropriations Act) contravenes House Rule 5.3, it should be noted that:

'The decisions are nearly unanimous in holding that an act cannot be declared invalid for failure of a house to observe its own rules. Courts will not inquire whether such rules have been observed in the passage of the act. 1 Sutherland Statutory Construction, 2d Ed, § 604. Coleman v. Lewis, supra.'

\*3 Such prohibition is founded upon the premise that the rulemaking authority of the House is conferred by Constitution, and that the separation of powers doctrine precludes Judicial inquiry into a determination that the Rule has been followed. Therefore, whether § 45 of Act 709 violates House Rule 5.3 is not properly determinable by this office. However, a perusal of § 45 of Act 709 portends sufficient compliance with the proviso portion of House Rule 5.3 in question.

#### QUESTION 4

Is there any statute or rule governing an agency's misrepresentations to the Budget and Control Board or the Legislature for the total amount or line item breakdown of its previous appropriation?

#### ANSWER

Our research does not disclose that there is any statute or rule which would govern an agency's misrepresentations to the State Budget and Control Board or to the Legislature for the total amount or line item breakdown of its previous appropriation. However, there are various statutes which govern the accountability for appropriated funds, e.g., Section 1-704 and Section 1-705.

Very truly yours,

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Senior Assistant  
Attorney General

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