

1975 WL 29334 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 18, 1975

*1 Mr. Pat Smith
State Auditor
P. O. Box 11333
Columbia, SC 29211

Dear Mr. Smith:

You have asked, pursuant to a request received by you from the State Department of Education, for advice concerning the propriety of the Budget and Control Board hearing a dispute between the Department of Education and Williamsburg County. This dispute centers around language in the 1975 Appropriations Bill, Act No. 237, Page 403, Paragraph 6:

Provided, Further, That in the expenditure of funds appropriated in this section, the Department is directed to comply fully with the terms of the agreement entered into with the state and local agencies at the time of one establishment of the Williamsburg Manpower Training Center.

The questions raised by the Department of Education are: (1) What body has authority to hear the complaint? (2) What are the terms of the agreement between the parties? The answer to the first question, while not entirely free from doubt, would be that pursuant to the general fiscal responsibilities placed in the Budget and Control Board, the Board could administratively review a dispute concerning the terms of a section of an Appropriations Bill. Such a conclusion is especially warranted where both sides are willing to have the dispute heard by the Board as a disinterested third party.

I make this determination in view of the following statutory authority:

Section 1-358 May cooperate in handling finances of State subdivisions.—The State Budget and Control Board may cooperate with and assist the authorities of the counties, municipalities, school districts and other subdivisions of the State in the handling, in whatever manner may be deemed by it desirable in each case of the financial obligations of such counties, municipalities, School districts and other subdivisions.

Act No. 237, 1975, Section 106—In addition to the powers and duties devolved upon the Budget and Control Board by the 1962 Code of Laws of this State, the said Board is hereby given full power and authority to make surveys, studies, and examinations of departments, institutions, and agencies of this State, as well as it's problems, so as to determine whether there may be an overlapping in the performance of the duties of the several departments, institutions, and agencies of the State, that proper administrative and organizational economy is being observed, and for the purpose of determining whether a proper system of accounting is maintained in the departments, institutions, commissions and agencies, and to require and enforce the adoption of such policies as are deemed necessary to accomplish these purposes;

Act No. 237, 1975, Section 107—The State Budget and Control Board shall have full power and authority to survey the progress of the collection of revenue and the expenditure of funds by all departments and institutions, and is hereby authorized and directed to make such reductions of appropriations as may be necessary to prevent a deficit;

*2 Such statutory provisions, while not expressly allowing such a review by the Budget and Control Board, could be implied to allow the Board to attempt to mediate a question arising out of the Appropriation Act. This review should

be limited to whether or not state funds are being properly expended by a State Agency in accordance with the terms of the Appropriation Act.

It must be emphasized that any decision by the Board would be in the nature of an advisory opinion. Either party would be free to pursue a judicial determination of the legal issues involved in this dispute, if they were not satisfied with the Board's decision.

The Board should hear the competing arguments of the Department of Education and the Williamsburg County representatives and determine in its opinion what agreement exists between the parties. Therefore, it would be premature for this office to render any opinion as to what agreement exists currently between the parties. Such restraint would be in accordance with the general policy of this office not to comment on matters in dispute between competing parties, especially where one party is a state agency and the other party is a county Tec Center.

I would advise that you recommend that the Board hear the dispute and make a determination as to any agreement between the parties and whether or not the parties have complied with such agreement. The Board's review should be confined merely to determining the correct allocation of funds pursuant to the Appropriations Act. Should the Board desire further assistance from this office after reviewing all the facts presented by the competing parties I would be happy to supply additional advice.

By copy of this letter, I am informing Dr. Busbee of the Department of Education, and Senator Floyd of Williamsburg County, of my opinion in this matter. I trust that such an opinion as I have issued will be satisfactory under the current circumstances.

Very truly yours,

George C. Beighley
Assistant Attorney General

ATTACHMENT

A BILL

TO AMEND SECTION 47-29, CODE OF LAWS OF SOUTH CAROLINA, 1962, RELATING TO ELECTIONS TO DETERMINE A CHANGE OF FORM OF GOVERNMENT OF A MUNICIPALITY, SO AS TO REVISE THE BALLOT FORM IN SUCH ELECTIONS.

Be it enacted by the General Assembly of the State of South Carolina: SECTION 1. Section 47-29 of the 1962 Code, added by Act 283 of 1975, is amended by striking the section and inserting: 'Section 47-29. In any election to determine a change of a form of government of a municipality, the question shall be framed by the governing body and printed on the prepared ballot in the following form, to wit: 'Shall the municipality of (name of municipality) change its form of government from (form selected by council or by prior election) to (form or forms requested to be voted upon in the petition)? (strike all forms except the one you prefer)' To effect a change in the form of government a proposed form shall receive a majority of the votes cast by the qualified electors of the municipality in the election.' SECTION 2. This act shall take effect upon approval by the Governor.

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