

1974 WL 28021 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 9, 1974

\*1 Honorable James B. Brandt  
Allendale County Representative  
Post Office Box 77  
Ulmer, SC 29849

Dear Mr. Brandt:

You have inquired as to the legality of the Allendale County Board of Directors overspending the fiscal year 1973-74 Appropriations Act for Allendale County approved by the South Carolina Legislature in Act No. 548, [1973] S.C. Acts & Jt. Res. 932, by issuing checks against the county's general fund without the approval of the Allendale County Legislative Delegation.

South Carolina Code Ann. Section 14-802 (1962) provides that in Allendale County:

No contracts shall be made, accounts approved or warrants drawn in excess of the appropriation made for any item in the annual county appropriation act without the written approval of the county legislative delegation first obtained.

Act No. 548 is the fiscal year 1973-74 Appropriations Act for Allendale County Section 16 of which provides:

The Allendale County Legislative Delegation is authorized to transfer from the general fund of the county additional funds for necessary county purposes, as the delegation may determine.

The validity of Act No. 548 is unclear in light of the South Carolina Supreme Court decision in Knight v. Salisbury, Opinion filed June 17, 1974, but it is the position of this Office that, inasmuch as the act has been enacted, it is presumed to be constitutional until a court holds otherwise.

Both Section 14-802 and Section 16 of Act No. 548 are of uncertain constitutionality in light of Article 1, Section 8 of the South Carolina Constitution requiring the separation of legislative, executive and judicial powers. Recent decisions have invalidated the delegation of county fiscal controls to the county legislative delegation rather than the county board of directors because of the mandate of Article 1, Section 8. See, Gunter v. Blanton, 259 S.C. 436, 192 S.E.2d 473 (1972); Gould v. Barton, 256 S.C. 175, 181 S.E.2d 662 (1971); Cox v. Bates, 237 S.C. 198, 116 S.E.2d 828 (1960); Dean v. Timmerman, 234 S.C. 35, 106 S.E.2d 665 (1959). None of these cases, however, has determined whether the overspending of funds originally appropriated by means of utilizing general county funds is a legislative or executive function. Inasmuch as the South Carolina Legislature has enacted Section 14-802 and Section 16 of Act No. 548, they are presumed to be constitutional. We also advise, however, that if an action were to be brought pursuant to the Declaratory Judgment Act (§ 10-2001, et seq. of the South Carolina Code of Laws of 1962, as amended), both statutes might be held unconstitutional under Article 1, Section 8 of the South Carolina Constitution because the transfer of funds would most logically be vested in the authority of the governing body of the county. This advice is consistent with previous opinions of this Office, copies of which are enclosed. See 1971 Ops. Att'y Gen., No. 3141, p. 96; 1969 Ops. Att'y Gen., No. 2643, p. 53; 1966 Ops. Att'y Gen., No. 2047, p. 128; 1965 Ops. Att'y Gen., No. 1947, p. 252.

\*2 Finally, Code Section 14-802, which applies specifically to Allendale County, should be considered in conjunction with Section 14-315 which applies to officials in all South Carolina counties.

It shall be unlawful for any officer, clerk or other person charged with disbursements of county funds appropriated by the General Assembly to exceed the amounts and purposes stated in such appropriation or to change or shift appropriations from

one item to another; provided, that transfers may be authorized by the General Assembly in any county appropriation act. S.C. Code Ann. § 14-315 (1962).

Section 14-315 requires legislative authorization for a county board of directors to overspend the county budget. This Office must presume that Section 14-315 is constitutional but we also recognize a possible conflict with Article 1, Section 8 of the South Carolina Constitution. See 1969 Ops. Att'y Gen., No. 2643, at 54. In conclusion, it would be illegal for the Allendale County Board of Directors to overspend the fiscal year 1973-74 county budget without the approval of the county legislative delegation under present laws which this Office presumes to be constitutional until court holds otherwise.

Very truly yours,

John L. Choate  
Legal Assistant

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