

OFFICE OF THE ATTORNEY GENERAL

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Honorable Robert C. Gafford
Chairman
Joint Interim Committee to
Study the State Tax Structure
House of Representatives
State Capitol
Montgomery, Alabama 36130

Governor - Legislature -
Appropriations - Executive
Orders - Employers and
Employees

Governor's Executive Order
cannot constitutionally
transfer appropriated funds
and legislatively enacted
functions between departments.

Dear Mr. Gafford:

You have requested an opinion of this office concerning the efficacy of Executive Order No. 31 which purports to order the transfer of certain law enforcement personnel, appropriated funds and state property from various state agencies to the Department of Public Safety. Your questions are:

- "1. Does Executive Order No. 31 contradict the General Appropriation Act for the fiscal years ending September 30, 1980 (Act 79-124) or September 30, 1981 (Act 80-593)?

- "2. Does Executive Order No. 31 violate Section 72 of the Constitution of 1901 and the doctrine of separation of powers between the executive and legislative branches of government?
- "3. Can funds be transferred from one agency or department of government to another agency or department by the Governor after the funds are appropriated by law?
- "4. Do the provisions of the Budget Management Act (Title 41, Chapter 19, Code of Alabama 1975) authorize such transfers?
- "5. Given that the drug and narcotic agents and inspectors of the state board of health are charged with the duty of enforcing the Uniformed Controlled Substance Act in Section 20-2-90 of the Code of Alabama 1975, and given that funds for this function are appropriated by legislative appropriation to the Department of Health, are the provisions of Executive Order No. 31 valid? (i.e., Can a Governor's Executive Order override a valid Act of the Legislature?)
- "6. Does Executive Order No. 31 violate any of the provisions of Sections 42, 43, and/or 44 of the Constitution of Alabama of 1901?"

Your questions telescope specifically to the premise: "Can the Governor by Executive Order override a valid act of the legislature?" It is the opinion of this office that such question should be answered in the negative. The executive branch of government cannot constitutionally encroach upon a legislative function. There are exceptions wherein the legislature has allowed executive allocations.

Such exceptions would include:

- A. End-of-year transfers of surplus from one agency to meet a salary deficiency in another agency.
- B. Inter-agency/department agreements for the transfer of funds for the purpose of accomplishing the specific objectives for which the funds were appropriated
 1. where the transferring agency/department is not divested of any of its authority, duties or responsibility and
 2. where the amount of the transfer is reasonably related to the value of goods furnished and/or services rendered to the transferring authority.

However, such exceptions are to be strictly construed and allowed only where proper standards for ascertainment have been set up in the act making the appropriation.

Executive Order No. 31 would appear clearly to contradict the general appropriation acts for the affected fiscal years.

Sincerely,

CHARLES A. GRADDICK
Attorney General

By-



R. FRANK USSERY
Assistant Attorney General