



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

March 10, 2004

Ms. Judy F. Scott
Abbeville County Treasurer
Post Office Box 38
Abbeville, South Carolina 29620

Dear Ms. Scott:

You have requested an advisory opinion from this Office on various issues regarding the roles and interrelation of the Abbeville County Council, the County Finance Director, and the County Treasurer. You have specifically asked the following five questions:

1. Is it legal for the Finance Director, County Director, or County Council to open and retain bank accounts containing county funds for lease-purchase agreements, loans, or any other revenue without the knowledge or consent of the County Treasurer?
2. Is it legal for the Finance Director, County Director, or County Council to disburse the aforementioned funds without the knowledge or consent of the County Treasurer?
3. Is it legal for the County Council of a county that has the Council form of government to delegate their statutory duties to the County Director, even after a county wide vote to change the form of government was voted down?
4. Is it legal for the County Council to meet in Executive Session to discuss the county wide elected offices and vote on items concerning their departments without notifying them or without them being informed of such being placed on the agenda?
5. Is it legal for the County Council to meet in Executive Session to discuss financial agreements and vote to obtain lease-purchase agreements without an attorney being present to advise them?

At the outset, I would remind you that I have researched your questions only from the standpoint of the legal questions as presented by you to this office. I have based my legal research

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upon those facts presented by you as referenced above. I have not attempted to independently investigate other facts because this office does not possess the resources or authority to adjudicate factual questions. See: Op. Atty. Gen. dated December 12, 1983.

As to your first two questions, this Office has previously advised that County Treasurers are generally the proper parties to receive, hold, and disburse county funds under state law. See Ops. S.C. Atty. Gen. dated October 6, 1986; August 29, 1979. Many of the specific duties of a County Treasurer can be found in Title 12 of the South Carolina Code of Laws, which covers taxation.

This Office noted in an opinion dated February 10, 1984 that a county governing body cannot alter the statutory duties of a County Treasurer. In an opinion addressed to the Aiken County Treasurer dated April 5, 1978, we specifically addressed this question in the context of the changes made by the then recently-enacted "home rule" legislation:

Neither the Aiken County Council nor any official, including the Finance Director, appointed by it has the authority to alter, expand or diminish...(the)... statutory duties...(of the County Treasurer)...except as specific legislation may so sanction it. The provisions of Act No. 283 of 1975, the 'home rule' legislation, do empower county councils to affect the functioning of elected officials in the areas of personnel policies and procedures, including employee grievances [S.C. Code Ann. § 4-9-30(7)], the establishment of an accounting and reporting system [S.C. Code Ann. § 4-9-30(8)] and of a centralized purchasing system [S.C. Code Ann. § 4-9-160] and the submission to it of annual fiscal reports [S.C. Code Ann. § 4-9-140]. These powers are broad, general ones and embrace elected officials and their offices as well as appointed officials. In my opinion, however, they do not authorize any usurpation of your statutory duties to receive, maintain and disburse county funds.

We further stated in the April 5, 1978 opinion, that the Code of Laws, as well as general law, requires that the County Treasurer receive and maintain all county funds, and that it is obligated to disburse such funds "pursuant to warrant only."

Based on the foregoing authorities, it would appear that County Council would improperly diminish the statutory duties of the County Treasurer if it were to create and maintain separate accounts for county funds or disburse funds without the knowledge or consent of the County Treasurer. It is the opinion of this Office that such an alteration of the Treasurer's statutory duties could violate state law absent some authority allowing such actions by the County Council.

Your third question centers on the issue of whether a County Council, with the council form of county government, can delegate any of its statutory duties to the County Director.

It is well recognized that:

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[t]he right of a county board to delegate its authority depends on the nature of the duty to be performed. Powers involving the exercise of judgment and discretion are in the nature of public trusts and cannot be delegated to a committee or agent. Duties which are purely ministerial and executive and do not involve the exercise of discretion may be delegated by the board to a committee or to an agent, an employee, or a servant.

20 C.J.S., Counties, § 89. Another treatise similarly states:

While legislative or discretionary powers or trusts devolved by charter or law on a council or governing body, or a specified board or officer cannot be delegated to others, it is equally well established that ministerial or administrative functions may be delegated to subordinates. The law has always recognized and emphasized the distinction between instances in which a discretion must be exercised by the officer of department or governing body in which the power is vested, and the performance of merely ministerial duties by subordinates and agents.

McQuillin, Municipal Corporations, § 10.41. While legislative functions cannot be delegated by a public body to one of its members, such body can 'confer . . . a measure of discretion in the application of ordinances and the exercise of administrative functions.' 62 C.J.S., Municipal Corporations, § 154. Section 4-9-310 provides that:

[i]n those counties adopting the council form of government provided for in this article, the responsibility for policy making and administration of county government shall be vested in the county council . . . The structure, organization, powers, duties, functions and responsibilities of county government under the council form shall be as prescribed in Article I of this chapter.

Accordingly, it is evident that County Council possesses the authority to delegate certain administrative powers and duties to third parties, which would in all likelihood include the County Director. So long as Council does not delegate legislative or policy making powers to others but confines its delegation of authority to administrative and ministerial powers a court would probably conclude such delegation is not an unlawful delegation of power. See Op. S.C. Atty. Gen. dated January 7, 1985.

Your fourth and fifth questions center around the issue of what actions may be permissibly taken up by county council while in executive session, and consequently to what extent public notice must be given concerning the topics to be discussed in executive session. Executive sessions of public bodies are governed by the South Carolina Freedom of Information Act, S.C. Code of Laws (1976) §30-4-10, et seq. The public policy behind the Act is codified in Section 30-4-15:

The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised

of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

As with any statute, the primary objective in construing the provisions of the Freedom of Information Act is to ascertain and give effect to the legislature's intent. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). South Carolina's Freedom of Information Act was designed to guarantee to the public reasonable access to certain information concerning activities of the government. Martin v. Ellisor, 266 S.C. 377, 213 S.E.2d 732 (1975). The Act is remedial in nature and must be liberally construed to carry out the purpose mandated by the General Assembly. South Carolina Department of Mental Health v. Hanna, 270 S.C. 210, 241 S.E.2d 563 (1978). Any exception to the Act's applicability must be narrowly construed. News and Observer Publishing Co. v. Interim Bd. of Ed. for Wake Co., 29 N.C.App. 37, 223 S.E.2d 580 (1976).

Section 30-4-60 of the Code requires that "[e]very meeting of all public bodies shall be open to the public unless closed pursuant to § 30-4-70 of this chapter." Section 30-4-70 enumerates the very limited circumstances for which an executive session may be convened and further specifies the procedures to be followed in convening in executive session. In relevant part, Section 30-4-70 provides:

(a) A public body may hold a meeting closed to the public for one or more of the following reasons:

(1) Discussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee, a student, or a person regulated by a public body or the appointment of a person to a public body; however, if an adversary hearing involving the employee or client is held, the employee or client has the right to demand that the hearing be conducted publicly. Nothing contained in this item shall prevent the public body, in its discretion, from deleting the names of the other employees or clients whose records are submitted for use at the hearing.

(2) Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of legal advice where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against the agency of a claim.

(3) Discussion regarding the development of security personnel or devices.

(4) Investigative proceedings regarding allegations of criminal misconduct.

(5) Discussion of matters relating to the proposed location, expansion, or the provision of services encouraging location or expansion of industries or other businesses in the area served by the public body...

(b) Before going into executive session the public agency shall vote in public on the question and when the vote is favorable, the presiding officer shall announce the specific purpose of the executive session. As used in this subsection, "specific purpose" means a description of the matter to be discussed as identified in items (1) through (5) of subsection (a) of this section. However, when the executive session is held pursuant to Sections 30-4-70(a)(1) or 30-4-70(a)(5), the identity of the individual or entity being discussed is not required to be disclosed to satisfy the requirement that the specific purpose of the executive session be stated. No action may be taken in executive session except to (a) adjourn or (b) return to public session. The members of a public body may not commit the public body to a course of action by a polling of members in executive session.

First and foremost, we believe that the statute makes clear that no action may be taken on any of topics discussed in executive session even if they fall under one of the few exceptions in Section 30-4-70. The only votes that may be made in executive session are to adjourn or to return to public session. So to the extent that you have asked whether county council may vote on matters concerning elected county officials or to obtain lease purchase agreements in executive session, the answer is clearly "no."

The only question remaining then is whether the items that you have mentioned may be discussed in executive session under the Act. As a general matter, it does not appear that a discussion regarding any particular elected county official would fit any of the stated exceptions. The exception in Section 30-4-70(a)(1) may apply if the issue is related to the discipline, compensation, or promotion of an county employee or any other person who is regulated by the council. The criminal misconduct exception of subsection (a)(4) may be implicated if a county official, or an employee within their department, is under some sort of criminal investigation. However, construing these exceptions narrowly and observing the legislative preference for public session, the instances where executive session is proper to discuss issues regarding elected county officials and their departments will be few.

The discussion of "financial agreements" would follow a similar analysis. A discussion of lease purchase agreement negotiations on property acquisitions may fall under the language of Section 30-4-70(a)(2). Other contractual negotiations with outside parties may also need to be held in executive session as a matter of policy. Furthermore, legal questions related to those financial negotiations may need to be taken up with the county attorney under subsection (a)(2). However, the (a)(2) exception should be construed narrowly and county council should articulate the reason why the particular issue cannot be taken up in public session. The ultimate question of whether any particular issue fits within the exceptions of Section 30-4-70 may hinge on facts that are beyond the

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scope of this opinion. As a general matter, questions of fact can only be determined by a court of competent jurisdiction and not this Office. See Op. S.C. Atty. Gen., dated June 30, 2003.

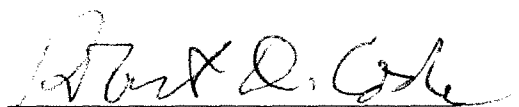
As a caveat, this Office also notes that Section 30-4-70(b) requires that a specific purpose for the executive session, which articulates the applicable exception under Section 30-4-70(a), be announced on the public record by the presiding officer of the council before council retires to executive session. We advised in an opinion dated January 26, 1988 that a general purpose such as "personnel matters" is insufficient to meet this requirement. Accordingly, we would advise County Council to comply with this requirement before entering into an executive session in order to prevent any questions of impropriety.

Very truly yours,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General