

January 8, 2007

The Honorable Keith Sloan
Vice Chairman, Barnwell County Council
County Agricultural Building , Office No. 105
Barnwell, South Carolina 29812

Dear Mr. Sloan:

We received your letter requesting an opinion on behalf of the Barnwell County Council (“County Council”) concerning its “authority to make budget reductions affecting offices of elected officials and how such reductions should be enforced.” According to your letter, County Council is contemplating significant budget reductions over the next several years. You stated: “These cuts will most likely require reductions in staff. These reductions in staff will be from county operations and offices of elected officials.” Furthermore, you add:

As I understand, state law specifically prohibits county councils from terminating employees of elected officials. Given this fact, if reductions in budget allocations to offices of elected officials can only be met by reductions in staff of the office(s), and the elected official(s) is (are) unwilling to make such reductions, exactly what are the methodologies available to county councils to enforce budget restrictions? Would it be acceptable to advise the affected official(s) that they must reduce staff to stay within the approved budget for their office, and lacking specific instructions from the elected official as to the personnel to be terminated, council make appropriate across-the-board reductions to salary of all personnel in their office, excluding the elected official, to meet budget allocations? If this is not acceptable, and given the fact that state law requires councils to fund necessary utilities, supplies, equipment, etc. for offices of elected officials, exactly what other methods are available to county councils to enforce budget limitations on elected officials?

Law/Analysis

In your letter, you mentioned a state law provision prohibiting a county from terminating employees of elected officials. This provision, which is part of the Home Rule legislation, is found

in section 4-9-30 of the South Carolina Code (1986 & Supp. 2005) and gives counties certain powers. Section 4-9-30(7) gives county governing bodies the responsibility for employing and discharging county personnel. However, it also states: "This employment and discharge authority does not extend to any personnel employed in departments or agencies under the direction of an elected official or an official appointed by an authority outside county government." S.C. Code Ann. § 4-9-30(7) (Supp. 2005). Thus, you are correct in your assessment that County Council may not terminate employees of an elected official. However, in your letter, you state you are not seeking to terminate the employees of an elected official. Rather, you wish to reduce budget allocations to elected officials and thus, wish to advise such elected officials to decrease their staff in order to remain within the guidelines of the revised budget.

As previously mentioned, the Legislature afforded numerous powers to county governments through section 4-9-30. Included in these powers is the power to "make appropriations for functions and operations of the county" Furthermore, section 4-9-140 instructs county councils to annually adopt operating and capital budgets for each year. S.C. Code Ann. § 4-9-140 (1986). Thus, under these provisions, the Legislature gives broad authority and discretion to county governments to appropriate funds for county purposes. See Ops. S.C. Atty. Gen., May 8, 2006; August 3, 1987; August 14, 1985.

In an opinion of this Office issued in 1978, we discussed a county's ability to decrease appropriations to specific county offices. Op. S.C. Atty. Gen., February 7, 1978.

With reference to budgetary matters, while it is true that the Council exercises totally the budgetary authority of Aiken County and, consequently, can decrease, increase or otherwise alter appropriations for specific county offices and functions [§ 4-9-140, CODE OF LAWS OF SOUTH CAROLINA, 1976], nevertheless, it cannot so decrease the appropriations of an elected official's office as to prevent the proper functioning thereof and, thus, indirectly, to abolish that official's office. See generally, 20 C.J.S. Counties §§ 100(a), (b) and (c) (1940); 56 AM.JUR.2d Municipal Corporations §§ 237 through 239 (1971); 3 MCQUILLIN MUNICIPAL CORPORATIONS § 12.118 (3rd ed. 1973); cf., Hayes v. Brockton, (Mass.) 48 N.E.2d 683. Whether or not the Council has, in any particular instance, exercised its budgetary authority so as to interfere with or prevent the proper functioning of an elected official's office is a factual matter which cannot be determined by this office. Cf., Bubier v. State, (Fla.) 299 So.2d 830; McCoy v. Mayor, 342 N.Y.S.2d 83; South Tiverton Volunteer Fire Dept. v. Cook, (R.I.) 125 A.2d 190 (disbursements could be made from fund appropriated by town council to fire department without council's preliminary approval of each expenditure).

Id. According to this opinion, a county government's ability to decrease appropriations to the office of an elected official is limited in that the appropriations cannot be decreased to the extent that they prevent the office from functioning properly or abolish the office.

We again addressed an issue similar to that in our 1978 opinion in an opinion dated August 14, 1985. Op. S.C. Atty. Gen., August 14, 1985. In that opinion, we considered whether a county council may "withdraw the appropriation for a particular deputy sheriff's position so as to result in the termination of the particular deputy" Id. In response, we stated:

[I]t is the opinion of this Office that it is extremely doubtful as to whether such action could be taken. While obviously a county council is vested with discretion in dealing with any appropriations from the standpoint of general economic and efficiency concerns, such discretion could not be utilized in a manner which would interfere with the decisions of a sheriff as to hiring and discharge of a deputy sheriff. Generally, courts have closely examined situations where attempts were made to withhold appropriations for sheriffs once they were appointed. Flaherty v. Milliken, 86 N.E. 558 (1908).

Id. In addition, we cited to our 1978 opinion and another opinion issued in 1985 finding a county council did not have the authority to refuse to provide compensation for a particular magisterial position. In considering the 1985 opinion, we noted the general principle that "a governing body cannot indirectly by a reduction of compensation of an office abolish it where it was not empowered to abolish the office directly." Id. (citing 67 C.J.S. Officers § 229). Ultimately we concluded

it is extremely doubtful whether action could be taken by a county council to withdraw the appropriation of the position of a particular deputy sheriff. Such could be construed as indirectly terminating a particular deputy sheriff's position which is a position the county council is not empowered to abolish directly.

Id.

In 1992, we were asked to address whether a county council may reduce the salary budget for the county and thereby reduce the staff of the county's treasurer's office. Op. S.C. Atty. Gen., October 29, 1992. In response we, stated: "Whether such reduction will cause the Treasurer's Office to function improperly is a question for the electorate to decide and resolve." Id.

With regard to the question at hand, we certainly recognize the Legislature's intent to vest budgetary authority in the county's governing body. However, based on the opinions cited above, such authority is limited with regard to the reduction in appropriations to the office of an elected official. Clearly, such reductions may not be to the extent that prevents the official's office from functioning properly. Furthermore, because counties are prohibited by section 4-9-30(7) from

terminating the employees of public officials, we are doubtful as to whether a court would allow counties to indirectly terminate an employee by abolishing their position through a reduction in appropriations for that position.

In this instance, the determination of whether the reductions you mention in your letter will result in the affected offices' inability to function properly is clearly a question of fact. Moreover, whether or not the reduction in funding to such offices is in fact a termination is also a question of fact. As we stated on numerous occasions, only a court, as the finder of fact, may ultimately resolve factual issues. See, e.g., Op. S.C. Atty. Gen., September 29, 2006. Thus, this Office is precluded from making such determinations.

You also inquire as to other method's available to county council's to enforce budget limitations on elected officials. While we are not aware of specific method's available, we note the requirement set forth in article X, section 8 of the South Carolina Constitution (Supp. 2005). This provision states: "Money shall be drawn from the treasury of the State or the treasury of any of its political subdivisions only in pursuance of appropriations made by law." Thus, if a public official were to expend funds that were not appropriated, such action would be in violation of the South Carolina Constitution.

Conclusion

Based on our findings above, we caution that should County Council chose to reduce budget allocations for the salaries of employees of public officials, such reductions may not be to the extent that they cause the office of the public official to not function properly. Furthermore, we also warn a court could find certain reductions to be in violation of section 4-9-30(7), if the court concludes that the reduction is an indirect termination of the employee. Finally, while we cannot offer any specific suggestions of ways in which county council may enforce budget reductions with regard to public officials, we note the requirement of article X, section 8 of the South Carolina Constitution mandating only appropriated funds may be disbursed.

Very truly yours,

Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General