

July 11, 2008

David S. Goble, Director
South Carolina State Library
Post Office Box 11469
Columbia, South Carolina 29211

Dear Mr. Goble:

We received your letter addressed to Attorney General Henry McMaster requesting an opinion of this Office concerning Horry County's (the County's) position that the director of the Horry County Library System must report to both the Library Board of Trustees (the "Board") and the Division Director of Administration for the County. By way of background, you provided us with the following information:

The director (chief librarian) of the Horry County Library System recently retired. In recruitment bulletins to fill the vacancy, Horry County stated that the library director "acts as liaison and reports to Division Director of Administration, and reports to the Library Board of Trustees." I believe that the position taken by the county in respect to the chief librarian reporting to the Division Director of Administration contradicts S.C. Code Sec. 4-9-36 and your opinion of May 1st, 1983 (1983 WL 181894 (S.C.A.G.))

Accordingly, you request an opinion of this Office on "the correct interpretation of state law on this point."

Law/Analysis

As you mentioned in your letter, sections 4-9-35 et seq. of the South Carolina Code (1986 & Supp. 2007) govern the establishment and operation of county public library systems. Section 4-9-35 of the South Carolina Code (1986) allows counties to create a public library system by ordinance, but provides that these systems are to be controlled and managed by a board of trustees and that the ordinance creating the system must be "consistent with the provisions of this section" Section

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4-9-36 of the South Carolina Code (1986) governs the duties of the boards of trustees. This provision states, in pertinent part:

The board as provided for in § 4-9-35 shall be authorized to exercise powers as to the policies of the county library which shall not be inconsistent with the general policies established by the governing body of the county, and pursuant to that authority shall be empowered to:

(1) Employ a chief librarian whose qualifications and credentials shall meet the certification requirements of the State Library Board, and who shall be responsible to the county library board for the administration of the program and the selection of library staff members required to carry out the functions of the library system.

...

S.C. Code Ann. § 4-9-36. In addition, section 4-9-38 of the South Carolina Code (1986) provides: "All employees of a county public library system shall be subject to the provisions of item (7) of § 4-9-30." Section 4-9-30(7) of the South Carolina Code (Supp. 2007) gives counties the authority to develop personnel policies and procedures for county employees. This provision states that all county employees, except for elected officials, are regulated by these policies. S.C. Code Ann. § 4-9-30(7).

In your request, you acknowledge that the Chief Librarian must abide by the County's personnel policies and procedures. However, you disagree that the Chief Librarian must report to the Division Director of Administration for the County. Furthermore, you believe that certain provisions contained in the County's Employment Guidelines, if applied to the Chief Librarian, would run afoul of the provisions contained in sections 4-9-35 et seq.

Section 4-9-36(1), as cited above, clarifies the Chief Librarian must report to the Board. However, because the Legislature specifies that all library employees are subject to the provisions contained in section 4-9-30(7), generally pertaining to county employees, we must determine whether the Legislature intended to require chief librarians to also report to their respective counties, or in this case the County's Division Director of Administration. In order to determine what authority a county has over its chief librarian, we must interpret the provisions cited above. In interpreting these provisions, we must be mindful of the "the cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the

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language used, and that language must be construed in light of the intended purpose of the statute.” In re Hosp. Pricing Litig., King v. AnMed Health, 377 S.C. 48, 54, 659 S.E.2d 131, 134 (2008) (citations omitted). Furthermore, “[s]ections which are part of the same statutory law of the State must be construed together. In construing statutory language, the statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect, if it can be done by any reasonable construction. Statutes pertaining to the same subject matter must be harmonized if at all possible.” In Interest of Doe, 318 S.C. 527, 531-32, 458 S.E.2d 556, 559 (Ct. App. 1995)(citations omitted). However, “[w]here there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect.” Capco of Summerville, Inc. v. J.H. Gayle Constr. Co., Inc., 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006).

Pursuant to section 4-9-30(7) of the South Carolina Code, the Legislature gave broad authority to counties with regard to their ability to regulate their own employees. Because chief librarians are county employees, who are specifically subject to section 4-9-30(7), we begin with the presumption that the Legislature intended for these individuals to be subject to the County’s supervision, just as any other county employee. However, by the provisions contained in sections 4-9-35 et seq., the Legislature removed some authority from the County when it created county public library systems. As referenced above, the Legislature specified that county public library systems are to be “controlled and managed” by their boards of trustees. S.C. Code Ann. § 4-9-35(B). While the general law, pursuant to section 4-9-30(7), calls for counties to be responsible for the employment and discharge of county personnel, section 4-9-36(1), specifically dealing with county library systems, placed the authority to employ a chief librarian in the hands of the library boards. In addition, this provision specifically states that chief librarians “shall be responsible to the county library board” Thus, we believe by this provision, the Legislature intended the specific provisions under sections 4-9-35 et seq. to apply and for library boards to maintain supervisory authority over chief librarians. See Anders v. County Council for Richland County, 284 S.C. 142, 325 S.E.2d 538 (1985) (finding “statute allowing solicitor to fire employee at his ‘pleasure’ controlled over general statute protecting employees terminated by elected officials.”); Rhodes v. Smith, 273 S.C. 13, 254 S.E.2d 49 (1979) (stating statutes providing for county and municipal employees grievance procedure do not override statute calling for deputy sheriffs to serve at the sheriff’s pleasure).

Moreover, as you mentioned in your letter, this Office issued an opinion in 1983 in which we considered an amendment to a county ordinance which, among other things, gave the county’s library board only the authority to recommend employment of a chief librarian to the county council and made the chief librarian responsible to county council rather than the library board. Op. S.C. Atty. Gen., May 23, 1983. We considered the Legislature’s intent with regard to the provisions contained in sections 4-9-35 et seq. We found the Legislature, through its enactment of these

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provisions, sought to create uniform county library systems. Id. With this intent in mind, we determined this amendment ran afoul of the library board's authority to control and manage the public library system pursuant to section 4-9-35(B). Id.

Based upon our interpretation of the provisions contained in section 4-9-35 et seq. and our prior opinion, we remain of the opinion that chief librarians are under the supervision and responsible to their respective library boards, rather than to their counties. Accordingly, we do not believe the Chief Librarian must report to the County, or the in this case the Division Director of Administration for the County. However, in accordance with section 4-9-38, the Chief Librarian continues to be subject to county personnel policies and must abide by these policies.

In addition to your general concern as to whom the Chief Librarian must report to, you also point out several provisions in the County's Employment Guidelines that you believe are inconsistent with the provisions contained in sections 4-9-35 et seq. The first provision cited governs the scope of the Employment Guidelines and states that the County Administrator "has complete authority to determine how the matter concerning an employee is to be handled and complete authority to make such determinations with or without consultation with any other person." You believe this provision runs afoul of the Board's authority pursuant to section 4-9-35 to control and manage the public library system. Based on our conclusion reach above, because we believe supervisory authority over the Chief Librarian rests with the Board, we do not believe the County Administrator has such authority over the Chief Librarian.

Next, you cite to a provision stating "[t]he County Administrator, through the Human Resources Director, shall be responsible for the final approval of all employment and discharge actions within the scope of this ordinance." Section 4-9-36 specifically provides that library boards shall employ the chief librarian. Because the right to discharge is generally implied from the right to employ, we believe a court would likely find that library boards also have the authority to discharge chief librarians. See Hamm v. Cent. States Health and Life Co. of Omaha, 299 S.C. 500, 386 S.E.2d 250 (1989). Accordingly, we do not believe the County Administrator may make decisions about whether to hire or terminate a chief librarian. Moreover, this conclusion is further supported by our 1983 opinion in which we concluded that counties may not usurp a library board's authority to employ a chief librarian. Op. S.C. Atty. Gen., May 23, 1983.

Lastly, you reference a provision allowing the County Administrator to transfer employees from one department to another. Again, we believe the Board has supervisory authority over the Chief Librarian. Thus, we do not believe the County Administrator may transfer the Chief Librarian to another county department.

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Conclusion

In summary, based upon the rules of statutory interpretation and our understanding of the Legislature's intent with regard to the provisions set forth in sections 4-9-35 et seq., we believe the Chief Librarian is responsible to the Board, not to the County. Furthermore, we do not believe the County Administrator has supervision authority over the Chief Librarian, can employ or discharge the Chief Librarian, or transfer the Chief Librarian from service to the county library system to another department of the County. However, we emphasize that the Chief Librarian must adhere to the County's personnel policies.

Very truly yours,

Henry McMaster
Attorney General

By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General