

April 4, 2008

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Dear Mr. Martin:

We understand from your letter that you are the County Attorney for Anderson County (the "County") and on behalf of the County, you wish to request an opinion of this Office. According to your letter, you ask generally "whether an internal auditor for Anderson County, which operates under the council/administrator form of government, may be employed by and supervised by Anderson County Council, directly, or whether such internal auditor must be under the direction and control of the Anderson County Administrator." You also specifically inquire as to "whether prior opinions of [this] office, written specifically with regard to the position of internal auditor, dated March 5, 1987, September 24, 1996, and August 16, 2002 are still valid and applicable and still reflect current South Carolina law, or whether South Carolina law with regard to such employment has changed." Further, you ask: "Even more specifically, as the current issue appears identical to the issue posed to your office by The Honorable Gene Taylor, then Sheriff of Anderson County, which precipitated your opinion dated September 24, 1996, the question may be further refined to simply inquire as to whether that opinion of your office, dated September 24, 1996, is still applicable to Anderson County and the office of internal auditor."

#### **Law/Analysis**

Section 4-9-30 of the South Carolina Code (1986 & Supp. 2007), provides the powers afforded to county governments. Among these is the power "to establish such agencies, departments, boards, commissions and positions in the county as may be necessary and proper to provide services of local concern for public purposes, to prescribe the functions thereof and to regulate, modify, merge or abolish any such agencies, departments, boards, commissions and positions, except as otherwise provided for in this title." S.C. Code Ann. § 4-9-30(6). However, under the provisions of the Code governing council-administrator forms of county government, section 4-9-620 states county administrators "shall be the administrative head of the county government and shall be responsible for the administration of all the departments of the county government which the council has the authority to control." S.C. Code Ann. § 4-9-620 (1986). Furthermore, section 4-9-630 of

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the South Carolina Code (1986) explains the powers and duties afforded to county administrators. This statute provides:

The powers and duties of the administrator shall include, but not be limited to, the following:

- (1) to serve as the chief administrative officer of the county government;
- (2) to execute the policies, directives and legislative actions of the council;
- (3) to direct and coordinate operational agencies and administrative activities of the county government;
- (4) to prepare annual operating and capital improvement budgets for submission to the council and in the exercise of these responsibilities he shall be empowered to require such reports, estimates and statistics on an annual or periodic basis as he deems necessary from all county departments and agencies;
- (5) to supervise the expenditure of appropriated funds;
- (6) to prepare annual, monthly and other reports for council on finances and administrative activities of the county;
- (7) to be responsible for the administration of county personnel policies including salary and classification plans approved by council;
- (8) to be responsible for employment and discharge of personnel subject to the provisions of subsection (7) of § 4-9-30 and subject to the appropriation of funds by the council for that purpose; and
- (9) to perform such other duties as may be required by the council.

S.C. Code Ann. § 4-9-630. According to this provision, county administrators are charged with the responsibility of hiring county employees, which we would presume includes an internal auditor. Moreover, section 4-6-660 of the South Carolina Code limits the authority of council over county employees by stating:

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Except for the purposes of inquiries and investigations, the council shall deal with county officers and employees who are subject to the direction and supervision of the county administrator solely through the administrator, and neither the council nor its members shall give orders or instructions to any such officers or employees.

Thus, according to this provision, under a council-administrator form of county government, council must go through the county administrator with regard matters of county personnel including internal auditors.

As you noted in your letter, on several occasions this Office considered the question of whether the county administrator or county council has authority to employ an internal auditor under a council-administrator form of government. In an opinion issued in 1987, we considered this exact question and determined that “appointment of the internal auditor would be within the purview of the county administrator rather than county council.” Op. S.C. Atty. Gen., March 5, 1987.

In 1996, we addressed the same question with regard to Anderson County. Op. S.C. Atty. Gen., September 24, 1996. In that opinion, we cited to our 1987 opinion, as well as two opinions issued prior to 1987, “dictating that if the internal auditor is subject to the personnel rules of [Anderson] County, that individual would be under the direction and control of the county administrator.” Id.

Finally and most recently in 2002, we considered whether the Beaufort County Council could hire an internal auditor as an independent contractor reporting directly to County Council rather than the county administrator. Op. S.C. Atty. Gen., August 16, 2002. We again reiterated the findings in our prior opinions that “such employment and discharge was ultimately the responsibility of county council but that the county administrator would actually perform the duties since council could deal with county employees only through the administrator.” Id. (quotations omitted). In addition, we concluded that “the reasoning expressed in our prior opinions is applicable to the situation you describe regardless of the label attached to the . . . auditor.” Id. Therefore, it did not matter if a county council hired the auditor as an independent contractor. We also concluded that while a county council can create a position and proscribe the functions of an internal auditor, “[i]f a county council were to attempt to assume administrative duties statutorily assigned to the county administrator, such action could be viewed as an illegal alteration of the form of government without following the required statutory procedures.” Id.

“This Office recognizes a long-standing rule that we will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law.” Op. S.C. Atty. Gen., September 29, 2006. In our review of the law relied upon in our 1987, 1996, and 2002 opinions, we do not find any change in the law. Furthermore, we do not find these previous opinions to be

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erroneous. Thus, we are of the opinion that these opinions remain valid. Therefore, we continue to find that only county administrators in a council-administrator form of government may employ internal auditors.

### **Conclusion**

Based on prior opinions of this Office, we believe the Anderson County Administrator, not the Anderson County Council, must employ and supervise internal auditors. In addition, to answer your inquiry, we believe our opinions issued on March 5, 1987, September 24, 1996, and August 16, 2002 remain valid.

Very truly yours,

Henry McMaster  
Attorney General

By: Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook  
Deputy Attorney General