



ALAN WILSON  
ATTORNEY GENERAL

May 16, 2012

The Honorable Jackie S. Bowers  
Clerk of Court, Newberry County  
P.O. Drawer 10  
Newberry, South Carolina 29108

Dear Ms. Bowers,

We received your letter "requesting a clarification of S.C. Code Section 14-17-210 as it pertains to the County Clerk of Court's responsibility concerning the courthouse." Noting this section provides that the "clerk shall have charge of the courthouse," you ask whether "this duty goes beyond opening and closing the courthouse as needed, and in addition, whether or not the clerk is charged with assigning office space and maintenance of the building." In addition, you ask for "clarification as to whether or not it refers to any building in the county which houses a courtroom." By way of background, you explain that Newberry County has a main courthouse, a courthouse annex in which the Family Court is held, and a courtroom at the Magistrate's Office adjacent to the jail.

#### Law/Analysis

The Legislature has charged the governing body of a county with the responsibility of providing certain county officials, including the clerk of court, with office room at the county courthouse:

The governing body of each county shall furnish the probate judge, auditor, superintendent of education, clerk of court, sheriff, treasurer and master in equity of their respective counties office room, together with necessary furniture and stationery for the same, which shall be kept at the courthouse of their respective counties, and it shall supply the offices of such officials with fuel, lights, postage and other incidentals necessary to the proper transaction of the legitimate business of such offices.

S.C. Code Ann. § 4-1-80. Furthermore, the governing body of each county is responsible for making "any alterations and additions deemed advisable, or which may become necessary, to any courthouse or jail built in the several counties." § 4-17-60.

As you indicate, section 14-17-210 provides:

Every clerk *shall have charge of the courthouse* within his county, open the same when required for public use and at all other times keep it closed. For every night any courthouse shall be kept open the clerk shall be liable to a penalty of five dollars for the use of the county, to be recovered by indictment.

(emphasis added).

Prior opinions of this Office have broadly construed the clerk of court's authority over a county courthouse. As we stated in a 2000 opinion:

This Office has previously interpreted the phrase "shall have charge of the courthouse" to mean that the Clerk of Court is vested with custody and control over the courthouse and that the Clerk is entrusted by statute with the management of the building in all respects except where alterations or additions to the courthouse are involved. [Op. S.C. Att'y Gen., 1961 WL 8462 (Dec. 8, 1961)]. Therefore, we advised that *the maintenance and upkeep of the courthouse falls within the jurisdiction and authority of the Clerk of Court.* Id.

Op. S.C. Att'y Gen., 2000 WL 356787, at \*1 (Feb. 23, 2000) (emphasis added); see also Administrative Order of the Chief Justice, September 20, 2002 (finding "the Newberry Clerk of Court is responsible for maintaining the Newberry County Courthouse and its contents ...."). In that opinion, we concluded that although the clerk of court has custody and control over the courthouse building, this custody and control does not extend "outside the walls of the courthouse building to the surrounding property" such as the courthouse parking lot. Id.

In a 2002 opinion, we concluded that the clerk of court's authority under section 14-17-210 should be read "as extending to the entire courthouse building." Op. S.C. Att'y Gen., 2002 WL 735347, at \*1 (April 8, 2002). We noted although that statute "was first enacted long ago in 1839, the General Assembly has not seen fit to repeal it." Id. We advised, however, that "the Clerk's authority may not be deemed to conflict with other statutes relating to the Probate Court, such as for the Court to maintain its own records pursuant to Section 14-23-1100." Id.

Likewise, the South Carolina Supreme Court broadly construed the clerk of court's authority over a county courthouse pursuant to section 14-17-210 in McCormick County Council v. Butler, 361 S.C. 92, 603 S.E.2d 586 (2004). In Butler, the Court addressed the question of who, as between the County Council and the Clerk of Court, had the authority to assign office space and possess the keys to offices in the McCormick County Courthouse. Noting that such authority is not expressly provided to anyone by sections 4-1-80, 4-17-60, or 14-17-210, the Court found the language of section 14-17-210 "giving the clerk of court *charge of the courthouse* must include the assignment of offices and possession of keys." Id. at 94, 603 S.E.2d at 586-87 (emphasis added). The Court also observed that "the county has no authority to control the Clerk of Court" because "§ 4-9-650 specifically states that the county administrator does not have authority over elected officials whose offices are created by the Constitution ...." Id.

In addition, the Court in Butler considered an administrative order dated June 23, 2004, in which the Chief Justice ordered that, pursuant to section 14-17-210, the McCormick County Clerk of Court has charge of the courthouse including the authority to exercise control over the assignment of rooms and possess all office keys. Id. at 93, 603 S.E.2d at 586. Citing Article V, section 4 of the South Carolina Constitution, the Court noted that "[a]s the administrative head of the unified judicial system, the Chief Justice has the authority to issue administrative orders controlling the courts in the State." Id. at 94, 603 S.E.2d at 587. "Because authority to control the courthouse is given to the Clerk of Court," the Court held "the Clerk of Court has the authority to assign offices in and possess the keys to the offices in the courthouse." Id.

In light of the above authorities broadly construing the clerk of court's "charge of the courthouse" pursuant to section 14-17-210, we believe the Clerk of Court is vested with custody and control over the Newberry County Courthouse. This includes responsibility for the management of the entire building in all respects except where alterations or additions are involved, as well as responsibility for the maintenance and upkeep of the building. Consistent with Butler, the Clerk's authority to control the courthouse specifically includes the authority to assign offices and possess the keys to the offices in the courthouse.

You also ask whether the Clerk of Court's control of the courthouse includes any building in Newberry County that houses a courtroom. You specifically inquire about the Family Court and a magistrate's court located outside of the Newberry County Courthouse.

We are aware of no statutory provision specifically providing who has charge, custody, or control of a building housing a family court or a magistrate's court. We think it significant to note that some county courthouses throughout this State do house either a family court or a magistrate's court even though such is not required under the law. See, e.g., § 63-3-350 ("Each county shall provide sufficient physical facilities for the operation of the statewide Family Court system in that county ...."); Baker v. Dorchester County Council, 315 S.C. 143, 432 S.E.2d 468 (1993) (holding § 63-3-350, then cited as § 20-7-1490, does not require that family court be located in county courthouse or county seat, but location must be readily accessible to majority of county residents); § 22-8-30(A) ("Each county shall provide sufficient facilities and personnel for the necessary and proper operation of the magistrates' courts in that county"). In light of Butler and prior opinions of this Office broadly construing the clerk of court's authority to control the county courthouse pursuant to section 14-17-210, we believe this authority clearly encompasses control over a family court or magistrate's court located within the walls of a county courthouse.

The question thus becomes whether the clerk of court's authority to control the county courthouse pursuant to section 14-17-210 extends to a family court or magistrate's court located outside the walls of the county courthouse. Section 14-17-20 provides:

The clerk of the court of common pleas elected in each county pursuant to Section 14-17-10 is ex officio clerk of the court of general sessions, *the family court*, and *all other courts of record in the county except as may be provided by the law* establishing the other courts.

§ 14-17-20 (emphasis added); see also § 14-17-220 ("Every clerk ... shall discharge *all the duties* required by law or the rules of court, from time to time, *or that may be incident to the office*") (emphasis added).

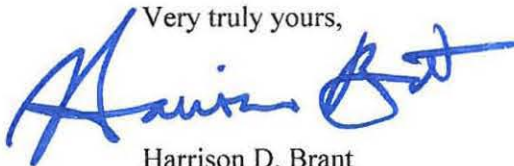
Since the clerk of court is ex officio the clerk of the family court, the clerk's authority to control the courthouse pursuant to section 14-17-210 arguably extends to any building which houses the family court. Furthermore, the Chief Justice has repeatedly ordered circuit court judges designated as chief judges for administrative purposes to "assist the clerk of court in fulfilling his or her responsibility pursuant to S.C. Code Ann. § 14-17-210 (1976) to assign courtrooms and offices to the presiding circuit and family court judges." Administrative Orders of the Chief Justice, June 28, 2007; February 4, 2011. Since administrative control of the unified judicial system and all of its courts is vested in the Chief Justice pursuant to Article V, section 4, we defer to her determination as to the clerk of court's responsibilities pursuant to section 14-17-210. Therefore, we conclude the Clerk of Court's authority to

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control the Newberry County Courthouse pursuant to section 14-17-210 extends to any building which houses the Family Court. To conclude otherwise would do nothing more than create confusion and disputes over the administration of county courthouses.

The clerk of court is not, however, ex officio clerk of a magistrate's court pursuant to section 14-17-20 since magistrates' courts are not courts of record. See § 22-3-730 ("All proceedings before magistrates shall be summary ...."); In re Richland County Magistrate's Court, 389 S.C. 408, 419, 699 S.E.2d 161, 167 (2010) ("Magistrate's court is summary in nature and is not a court of record"). Furthermore, we are aware of no order from the Chief Justice providing that the clerk of court's charge of the courthouse pursuant to section 14-17-210 extends to a magistrate court. Therefore, we are unable to find any authority which can be relied upon to conclude that the Clerk of Court exercises any degree of control over a facility housing a magistrate's court at a location outside the walls of the county courthouse. If this is not the result intended by the Legislature or the Chief Justice as the administrative head of the unified judicial system, either the Legislature or the Chief Justice could provide clarification as to the clerk of court's authority over such magistrates' courts.

Very truly yours,



Harrison D. Brant  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General