

1976 WL 30615 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 16, 1976

*1 M. D. Douglas, Esquire
Attorney at Law
Winnsboro, South Carolina

Dear Mr. Douglas:

You have requested an opinion as to whether or not the Fairfield County Council is authorized to provide by ordinance that the Judge of Probate and the Clerk of Court of that county are hereafter to be compensated by salary only and that the fees heretofore paid to and collected by them are to be paid to the county itself. The statutory authority for the fee schedules presently being used by the Probate Judge and the Clerk of Court in Fairfield County is found in Sections 27-301 et seq. and Sections 27-51 et seq., respectively, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended.

As you know, the County Council is the governing body of a political subdivision of this State and, as such, possesses only those powers which are either expressly granted or necessarily implied. See, 81 C.J.S. States § 58 at 977-8; 1967 OPS.ATTY.GEN. No. 2213 at 7. Act No. of 1968 established the Fairfield County Council; nowhere in that legislation nor in the amendments thereto is there any language either expressly or impliedly granting to the Council the authority to change the method of compensation for the Probate Judge or the Clerk of Court by placing them both on salaries and requiring fees heretofore paid to and collected by them to be paid to the County itself. In fact, Section 8, subdivision 13 of that Act provides in part that:
. . . the duties and functions now provided by law for the offices of the . . . clerk of court, probate judge, . . . shall not be altered.

See, 55 STAT. Act No. 968 at 2357 (1968), as amended.

The opinion of this office is, therefore, that the Fairfield County Council cannot provide by ordinance that the Judge of Probate and the Clerk of Court are hereafter to be compensated by salary only and that the fees heretofore paid to and collected by them are to be paid to the County itself.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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