



ALAN WILSON  
ATTORNEY GENERAL

September 29, 2025

Sharon H. West  
Spartanburg County Auditor  
366 North Church Street  
Spartanburg, SC 29303

Dear Auditor West:

Attorney General Alan Wilson referred your letter to the Opinions section for a response. You seek an opinion regarding whether “a county council [has] authority under South Carolina law to withhold the salary of an elected constitutional officer, such as sheriff . . . , for an extended leave of absence due to illness or other circumstances?” Specifically, you seek clarification on whether such an action violates the Home Rule Act, S.C. Code Ann. § 4-9-10 *et seq.*, which prohibits decreasing an elected official’s salary during their term in office. See § 4-9-30(7). You explain in your letter that the Spartanburg County Council recently threatened to withhold the salary of Sheriff Chuck Wright during a four-week leave of absence.

#### Law/Analysis

I begin by noting this Office is unable to issue an advisory opinion to determine facts. As we have stated in prior opinions, “[b]ecause this Office does not have the authority of a court or other fact-finding body, we are not able to adjudicate or investigate factual questions.” Op. S.C. Att’y Gen., 2003 WL 21040130 at \*1 (Feb. 19, 2003) (quoting Ops. S.C. Att’y Gen., 2003 WL 21040130 at \*1 (Feb. 19, 2003) and Sept. 3, 1999, at \*2). Therefore, this Office cannot make factual determinations regarding the specific situation involving Sheriff Wright’s salary, but the Office can render an opinion on the question of law regarding the authority of a county’s governing body to withhold the salary of a constitutional official during a leave of absence.<sup>1</sup>

We must begin by establishing under what authority an elected county official may take a “leave of absence” from their duties. An opinion of this Office dated January 8, 1996, stated:

The term “leave of absence” does not mean a permanent separation from employment. Rather, it signifies a temporary absence from duty with an intention to return, during which time remuneration is suspended. The

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<sup>1</sup> Under South Carolina law, certain officials, such as sheriffs, are directly elected by the electors in a county. See e.g., S.C. Constitution Art. V, § 24.

relationship of public employer and public employee would therefore continue during this period of leave except for suspension of his obligation to carry out the duties of his work and the compensation therefor.

Op. S.C. Att’y Gen., 1996 WL 82889 at \*1 (Jan. 8, 1996). I am unaware of any statutory provisions or policies authorizing a leave of absence for a county sheriff or other constitutional official. Such absence of authority here contrasts with provisions, such as S.C. Code Ann. §§ 8-7-20 and 8-7-90, which authorize leaves of absence for public employees serving in the military or National Guard. Opinions of other attorneys general have cited situations in which leaves of absence are specifically provided for by policies or statutes. See Ops. Ala. Att’y Gen. 2004 WL 1771087 (July 19, 2004) and 1998 WL 879822 (March 11, 1998); Op. Miss. Att’y Gen. 2003 WL 21003316 (March 28, 2003); Fla. Att’y Gen. 2001 WL 1329740 (October 29, 2001). This lack of authorization mirrors the lack of authorization discussed in our prior opinion regarding leaves of absence for members of a county elections board in which we concluded that members of a county elections board are not authorized to take leaves of absence. See Op. S.C. Att’y Gen., 2009 WL 1968623 at \*2 (June 17, 2009). Based upon our review, I am unaware of any basis that would authorize a leave of absence for a county sheriff or other constitutional official.

Since county sheriffs and other constitutional officials may not take a leave of absence, an official who purports to do so is in fact refusing to perform the duties of his office. The question thus becomes what actions may a county governing body take if a sheriff or other constitutional official is not fulfilling the duties of their office.

County governing bodies have authority over how funds are appropriated and have a duty to establish county bodies each year. Section 4-9-140 directs counties to adopt an annual budget for the operation of the county. Section 4-9-30(5) of the South Carolina Code provides an extensive list of enumerated powers of county governments including the power to “make appropriations for functions and operations of the county.” Section 4-9-25 states “[t]he powers of a county must be liberally construed in favor of the county and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties.” Thus, the governing body of a county has wide authority regarding the appropriation of funds.

However, “the authority of a county’s governing body is not without limitations.” Op. S.C. Att’y Gen., 2019 WL 6244761 at \*1 (Nov. 7, 2019). Section 4-9-30(7) limits the authority of county governing bodies regarding payment of constitutional officials saying, “The salary of those officials elected by the people may be increased but may not be reduced during the terms for which they are elected . . . .” Further, in 2011 this Office opined that a county governing body “cannot interfere with any of the duties and responsibilities given to elected county officials under State law.” Op. S.C. Att’y Gen., 2011 WL 1740743 at \*2 (Apr. 29, 2011). In that opinion, we considered that § 4-9-30(7) gives county councils the authority to employ and discharge county personnel, but states “[t]his 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.” Based on this provision and in accordance with prior

opinions, this Office determined “with regard to the budgets of elected officials, county councils ‘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.’” *Id.* at \*1 (quoting *Op. S.C. Att’y Gen.*, 1978 WL 34687 at \*2 (Feb. 7, 1978)); see also, *Op. S.C. Att’y Gen.*, 2007 WL 419432 at \*4 (Jan. 8, 2007) (finding reductions to budget allocations for the salaries of employees of public officials may not be reduced to “the extent that they cause the office of the public official to not function properly.”). In short, county governing bodies are precluded from exercising their appropriation authority in such a way that undermines the independence of constitutional officials who are not under the governing body’s authority and supervision.

These limitations reflect the General Assembly’s striking of a careful balance between the county governing body’s interest in the smooth operation of county offices and the electorate’s interest in having its votes given effect. *Eargle v. Horry Cnty.*, 335 S.C. 425, 431, 517 S.E.2d 3, 6 (Ct. App. 1999), *aff’d*, 344 S.C. 449, 545 S.E.2d 276 (2001). While a county governing body needs an appropriate level of control to ensure the smooth operation of county offices, giving the county governing body too much control over an elected official could force the elected official to place the interests and concerns of the governing body over those of the electorate. Moreover, a county governing body unhappy with the results of an election could use its power to render the duly-elected official largely ineffective. Thus, the operative feature of this balancing of interests is the maintenance of working government while ensuring the independence of constitutionally elected officials.

In light of this balance of authority, we turn to the withholding of a salary for an official who is not performing the duties of their office. Since, as was discussed above, there does not appear to be any authority for constitutional officials to take a leave of absence, a constitutional official who purports to do so has abdicated the duties of their office. A county governing body that withholds payment until an official resumes the duties of their office is not interfering with the official’s exercise of authority or influencing their discretion. Quite the opposite, the county governing body by conditioning payment on the performance of duties is insisting that the official fulfill their duties. The governing body is not reducing the amount which the official is due for performing their job duties; instead, the governing body is withholding monies for duties not performed. When a county governing body exercises its authority in this way, the withheld salary does not constitute a decrease in appropriations which prevents the proper functioning of the official’s office nor does it constitute a reduction in their salary.


Finally, I note that such an exercise of authority by a county governing body is in line with the necessary and proper language in § 4-9-25 which gives counties the authority “necessary and proper for . . . preserving health, peace, order, and **good government**.” § 4-9-25 (emphasis added). By requiring officials to fulfill the duties of their office in order to receive compensation, the county governing body is taking steps necessary and proper to ensure good government in the county.

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**Conclusion**


I am unaware of any authority which permits a constitutional official to take a leave of absence. As a result, county governing bodies may withhold the salary of an official who purports to take a leave of absence. Doing so does not impermissibly interfere with the independence of a constitutional official and instead promotes principles of good governance in the county.

Sincerely,



David Leggett  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General Emeritus