



ALAN WILSON
ATTORNEY GENERAL

December 1, 2023

Mr. Matthew Connelly
Chairman
Allendale County Council
P.O. Box 190
Allendale, SC 29810

Dear Chairman Connelly:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter states the following:

Allendale County is considering a consolidation of law enforcement organizations in the County through the creation of a county police department. The potential advantages of a county police department for a small county such as Allendale County, include a reduction in public safety infrastructure costs, as well as a reduction in maintenance and equipment costs. Consolidation will also help to address personnel shortages and provide improvements in the consistency and efficiency of services. However, questions regarding how the County may fund a county police department have arisen.

Act 388 of 2006, the Property Tax Reform Act, imposes a cap on increases in millage rates imposed for the operating purposes of counties through its amendments to Section 6-1-320 of the South Carolina Code. Your office has explained that Section 6-1-320 limits millage rate increases to the average twelve-month consumer price indices of the preceding calendar year, and "the percentage increase in the previous year in the population of the entity as determined by the Revenue and Fiscal Affairs Office." Op. S.C. Att'y Gen., 2021 WL 5034371 (October 18, 2021) (quoting S.C. Code Ann. § 6-1-320(A)(1) (Supp. 2020)). Allendale County is especially restricted by this provision because its population has been steadily declining in recent years.

However, there are circumstances in which governing bodies are permitted to exceed the millage rate cap. Given the complex nature of setting up a county police department through consolidation of multiple law enforcement organizations, Allendale County is seeking guidance on the following:

- (1) Would Allendale County be permitted to use current millage to fund the operations of a county police department created under Section 4-9-33 of the South Carolina Code?
- (2) Would the creation of a county police department under Section 4-9-33 of the South Carolina Code constitute a new or future service rather than an ongoing service such that an increase in millage may be imposed to fund the operating expenses of the police force? In particular, Allendale County questions whether the enumerated description of a county police department which functions to “duplicate or replace the law enforcement functions of a sheriff” prohibits the services of such a police department to be considered as a new service. S.C. Code Ann. § 4-9-33.

Law/Analysis

It is this Office's opinion that if a referendum is held and the electorate approves the creation of a county police department that “duplicate[s] or replace[s] the law enforcement functions of a sheriff,” county council is authorized to use current millage to fund such a department's operations. S.C. Code § 4-9-33. Our opinions have consistently stated that the South Carolina Constitution requires public funds be spent for public purposes.

No tax, subsidy or charge shall be established, fixed, laid or levied, under any pretext whatsoever, without the consent of the people or their representatives lawfully assembled. Any tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied.

S.C. Const. art. X, § 5 (emphasis added). The South Carolina Supreme Court has described public purposes to include “the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents, or at least a substantial part thereof.” Anderson v. Baehr, 265 S.C. 153, 162, 217 S.E.2d 43, 47 (1975). These articulated purposes are broadly reflected in the listed lists the powers of counties.

All counties of the State ... have authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of these powers in relation to health and order in counties or respecting any subject as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order, and good government in them. The 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.

S.C. Code § 4-9-25. Section 4-9-33 makes clear that county police departments created thereunder are authorized to provide “law enforcement functions” which is defined as “those activities and duties which require the exercise of custodial arrest authority by a sheriff” and incidental activities. Therefore, it is this Office’s opinion that a court would hold a county may use the public funds available under current millage to fund a county police department’s operations as they would serve a public purpose.

This Office understands the concern in your letter is focused on whether the county can allocate funds collected under current millage in future budgets to fund a county police department and correspondingly reduce funding of the sheriff’s office. Initially, we note that county council is authorized under the general law of this state to adopt annual budgets for the operation of county government.

All county offices, departments, boards, commissions or institutions receiving county funds shall make a full, detailed annual fiscal report to the county council at the end of the fiscal year.

County council shall adopt annually and prior to the beginning of the fiscal year operating and capital budgets for the operation of county government and shall in such budgets identify the sources of anticipated revenue including taxes necessary to meet the financial requirements of the budgets adopted. Council shall further provide for the levy and collection of taxes necessary to meet all budget requirements except as provided for by other revenue sources.

S.C. Code § 4-9-140. However, our opinions also explain that the council cannot reduce funding for an elected official to such an extent that the office’s functions are compromised.

[I]n a 2011 opinion this Office opined that a county council “cannot interfere with any of the duties and responsibilities given to elected county officials under State

law.” Op. Att’y Gen., 2011 WL 1740743 (Apr. 29, 2011). We considered that section 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. (quoting Op. Att’y Gen., 1978 WL 34687 (S.C.A.G. Feb. 7, 1978)). See also, Op. Att’y Gen., 2007 WL 419432 (S.C.A.G. 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.”).

Op. S.C. Att’y Gen., 2019 WL 6244761 (November 7, 2019). Because section 4-9-33 permits a county police department to either “duplicate” or “replace the law enforcement functions of a sheriff,” it may well be permissible to reallocate a proportional amount of funding. However, even if a sheriff’s law enforcement functions are replaced, the sheriff’s office must continue to be funded at an adequate level to ensure the proper functioning of the office’s remaining duties.

Finally, it is this Office’s opinion that law enforcement services authorized by section 4-9-33 would not be considered a new or future service. To date no county has created a county police department using the process in section 4-9-33 and this Office is unaware of any court orders interpreting the statute in this context.¹ Therefore, as this appears to be a matter of first impression, this opinion will resort to the rules of statutory construction to ascertain whether a court is likely to hold a county police department provides a new service. When interpreting legislation, the primary goal is to determine the General Assembly’s intent. See Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) (“The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible.”). Where a statute’s language is

¹ The South Carolina Supreme Court decision in Graham v. Creel, 289 S.C. 165, 345 S.E.2d 717 (1986) provides an example of a county police commission created in Horry County by the General Assembly via local law prior to adoption of Home Rule and section 4-9-33. Subsequently, the county council abolished the county police commission and devolved its function upon county council and the county administrator. Id. It is this Office’s understanding that Horry County Police Department is the only county police department currently operating in the state. See Henry v. Horry Cnty., 334 S.C. 461, 462, 514 S.E.2d 122, 122 (1999) (“Horry County has two law enforcement agencies: the Horry County Sheriff and the Horry County Police Department.”).

plain and unambiguous, “the text of a statute is considered the best evidence of the legislative intent or will.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

In the first paragraph of section 4-9-33, the plain language of the statute allows the creation of a county police department “which would duplicate or replace the law enforcement functions of a sheriff.” S.C. Code § 4-9-33 (emphasis added). The use of the words “duplicate” and “replace” strongly suggests the Legislature did not intend county police departments to provide new or different law enforcement functions. See American Heritage College Dictionary 426 (3d. ed. 1993) (“Duplicate- 1. Identically copied from an original; 2. Existing or growing in two corresponding parts; double”); American Heritage College Dictionary 1157 (3d. ed. 1993) (“Replace- ... 2. To take or fill the place of; 3. To be or provide a substitute for.”). Moreover, the second paragraph of section 4-9-33 makes clear that code enforcement and other law enforcement services that do not generally invoke custodial arrest authority remain available to counties regardless of whether a referendum is held and ultimately approved. See S.C. Code § 4-9-33 (The statute does not restrict “the authority of a county council to ... provide other services not directly related to law enforcement, to exercise the powers conferred by general law upon counties to protect the public health, safety, and general welfare of the community.”). A county council may choose to provide these other services for a first time, but the “law enforcement functions of a sheriff” already exist under the general law of the state and would only be transferred to a new entity. See Henry v. Horry Cnty., 334 S.C. 461, 514 S.E.2d 122 (1999) (discussing constitutionality of special laws which devolved specific functions of the sheriff’s office to the Horry County Council and the Horry County Administrator).

Conclusion

As is discussed more fully above, it is this Offices opinion that if a referendum is held and the electorate approves the creation of a county police department that “duplicate[s] or replace[s] the law enforcement functions of a sheriff,” county council is authorized to use current millage to fund such a department’s operations. S.C. Code § 4-9-33. Because section 4-9-33 permits a county police department to either “duplicate” or “replace the law enforcement functions of a sheriff,” it may well be permissible to reallocate a proportional amount of funding. However, even if a sheriff’s law enforcement functions are replaced by a county police department, the sheriff’s office must continue to be funded at an adequate level to ensure the proper functioning of the office’s remaining duties. To be clear, even replacing a sheriff’s law enforcement functions according to the provisions of this statute cannot eliminate the constitutional office of the county sheriff. S.C. Const. art. V, § 24 (“There shall be elected in each county by the electors thereof a ... a sheriff ... The General Assembly shall provide by law for their duties and compensation.”). Finally, it is this

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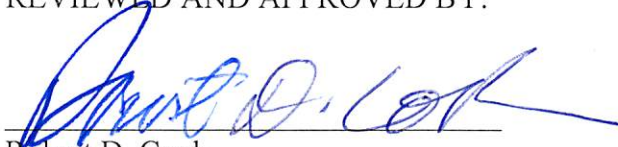
Office's opinion that law enforcement services authorized by section 4-9-33 would not be considered a new or future service.

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General