



ALAN WILSON
ATTORNEY GENERAL

April 6, 2026

Mr. Lawrence E. Flynn, Esq.
Interim Jasper County Attorney
PO Box 11509
Columbia, SC 29211

Dear Mr. Flynn:

Attorney General Alan Wilson referred your letter to the Opinions section for a response. You seek an opinion regarding whether the Jasper County Treasurer has the authority to hire independent legal counsel to represent his office, whether the County Treasurer has the authority to enter into a contract on behalf of the county for independent legal counsel hired to represent his office, and whether the county is obligated to pay debts incurred as a result of the County Treasurer hiring independent legal counsel to represent his office.

On March 27, we received a letter from Jasper County Treasurer Michael T. Skinner providing additional information regarding this request.

The first issue you raise regards a county official's authority to retain legal counsel other than the county attorney. This Office has previously observed that, as a general rule, "where a statute [or ordinance] authorizes legal counsel charged with the duty of conducting the legal business of a governmental agency, contracts with other attorneys for legal services are void." Op. S.C. Att'y Gen., 1985 WL 259128 at *1 (Feb. 15, 1985) (citing Board of Supervisors of Maricopa County v. Woodall, 120 Ariz. 379, 586 P.2d 628 (1978); 10 McQuillin, Municipal Corporations, § 29.12 (3 ed.)). Jasper County has an ordinance which provides for the employment of a county attorney and specifically states, "No county agency, commission, board, department, or committee shall employ an attorney other than the county attorney unless specifically authorized by the county council." Jasper County Ordinances § 2-69 County Attorney, https://library.municode.com/sc/jasper_county/codes/code_of_ordinances?nodeId=COOR_CH2_AD_ARTIIIIFEM_S2-69COAT. The Jasper County Treasurer's office is a "county agency, commission, board, department, or committee;" therefore, the County Treasurer does not have general authority to retain independent legal counsel to represent his office absent the approval of county council.

However, as this Office opined in 1985, "[i]n certain extenuating circumstances, there is a well established exception to this general rule [barring the hiring of independent legal counsel]." Op. S.C. Att'y Gen., 1985 WL 259128 at *2. The exception "recognizes the implied authority of

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a [local government] . . . board or officer to hire counsel in the good faith prosecution or defense of an action taken in the public interest and in conjunction with its or his official duties where the . . . [local government's] attorney refuses to act or is incapable of or is disqualified from acting.” Id. (quoting Coventry School Committee v. Richtarik, 411 A.2d 912, 916 (R.I. 1980)). Thus, in certain circumstances, a county official, such as the County Treasurer, has implied authority to hire independent legal counsel when doing so is necessary to prosecute or defend a case brought in the public interest within his official duties and the county attorney cannot handle the matter.

This Office is unable to find 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 1999 WL 986738 at *1 (Sept. 3, 1999, at *2)). As result, though you have provided invoices detailing the bills incurred by the Jasper County Treasurer, the information on those invoices does not provide enough information to determine whether those bills stem from work which would fall into the exception laid out above, nor do we have the authority to make such a determination.

Regarding the second issue you raise, which addresses the authority of the County Treasurer to enter into contracts and obligate the county to spend money in a particular manner, the law on this point is clear and settled, the South Carolina General Assembly has explicitly provided that the authority “to make and execute contracts” belongs to county council, not to the county treasurer. S.C. Code Ann. § 4-9-30(3). This exclusivity of this authority stems naturally from the county council’s plenary power over the county treasury. The county council is the only body charged with allocating and appropriating county funds, so the county council must control the authority to commit those funds, contractually or otherwise. Moreover, Article I, Section 8 of the South Carolina Constitution provides for a separation of powers stating:

In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.

S.C. Const. art. I § 8. Article X, Section 8 then provides that “[m]oney shall be drawn from the treasury of the State or the treasury of any of its political subdivisions only in pursuance of appropriations made by law.” Id. (emphasis added). The South Carolina Supreme Court has unequivocally ruled, “The appropriation of public funds is a legislative function.” Gilstrap v. S.C. Budget & Control Bd., 310 S.C. 210, 216, 423 S.E.2d 101, 105 (1992) (citations omitted). The County Treasurer is an executive, not a legislator, and therefore cannot properly exercise any authority over the appropriation of public money.

Furthermore, Jasper County Council has only delegated its authority to enter into contracts on behalf of the county to the County Administrator and County Council. See Jasper County Ordinances § 2-404 Contraction/purchasing authority,

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https://library.municode.com/sc/jasper_county/codes/code_of_ordinances?nodeId=COOR_CH2_AD_ARTVPUCO_DIVIGE_S2-404COPUAU (“The following officials shall have the authority to enter into contracts on behalf of the county . . . No other person, county employee, agency or department shall enter into a contract on behalf of the county except as listed below: (1) *Contracts not exceeding \$25,000.00*: The county administrator shall have the authority to enter into such contracts. This authority does not extend to contracts for special services. (2) *Contracts in excess of \$25,000.00 and all contracts for special services*: Only the county council has the authority to enter into these contracts.”). While County Council has adopted slightly different rules for special services, which includes legal advice and representation, the County Treasurer is not authorized to enter into contracts for special services without County Council’s approval. See Jasper County Ordinances § Sec. 2-413 Authority to Contract for Special Services, https://library.municode.com/sc/jasper_county/codes/code_of_ordinances?nodeId=COOR_CH2_AD_ARTVPUCO_DIVIGE_S2-413AUCOSPSE (“[T]hose departments which normally utilize such services may contract on their behalf for such service in accordance with this article provided that the following requirements are met . . . (3) The department shall obtain the approval of the county council.”). Thus, in addition to the state law prohibitions on the County Treasurer appropriating funds, Jasper County has not given the County Treasurer’s the authority to contract for legal services absent their approval.¹

In his letter, the County Treasurer suggests that “once funds are appropriated to an elected office, the administration of such funds rests with the elected official.” Moreover, he states, “once funds are appropriated, they are to be used for the operation of the office for which they were designated.” In so saying, he asserts that he has authority to use money appropriated to his office for any purpose, regardless of what County Council has appropriated it for, as long as it is in support of his office’s statutory duties. As discussed below, this contention is without merit.

The County Treasurer is correct that County Council may not use its budgetary powers to interfere with his ability to carry out his duties. Previously, 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.’” *Op. S.C. Att’y Gen.*, 2011 WL 1740743 at *2 (Apr. 29, 2011) (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 councils are precluded from exercising their appropriation authority in such a way that undermines the independence of constitutional officials who are not under the council’s authority and supervision; however, this limitation does not wholly prevent them from appropriating funds and establishing the conditions under which those funds

¹ It is unlikely that the County Council’s ability to limit the authority of the County Treasurer, or other county officials, to enter into a contract for legal services affects the exemption laid out above which allows for hiring independent counsel in certain circumstances. Any legal fees resulting from such representation may be paid as described below.

may be spent. Should the County Treasurer believe the funds appropriated to his office need to be reallocated, S.C. Code Section 4-9-140 provides, “The provisions of this section shall not be construed to prohibit the transfer of funds appropriated in the annual budget for purposes other than as specified in such annual budget when such transfers are approved by council.” S.C. Code Ann. § 4-9-140 (YEAR) (emphasis added). The County Treasurer may obtain approval to reallocate money in furtherance of his office’s duties, but in the absence of county council’s approval, the County Treasurer may not reallocate the funds appropriated to his office.

Despite his assertions to the contrary, the County Treasurer’s arguments regarding appropriations are substantially the same as the arguments raised and rejected in Fowler v. Florence County and Starks. See Order filed April 18, 2012, 2010-CP-21-01248 (S.C. Court of Common Pleas). In Fowler, the Florence County Treasurer attempted to alter line-item appropriations and reallocate funds to pay for independent legal counsel for his office. The Circuit Court ruled that so doing, even if it was “budget neutral,” constituted appropriating money and was therefore exclusively within the purview of the County Council. All of the logic laid out in Fowler applies here, so we believe a court would likely rule that the County Treasurer lacks the authority to obligate the county to pay for independent legal representation of his office, absent the approval of county council.

Finally, we consider the question of whether Jasper County Council is obligated to pay legal fees incurred as a result of the County Treasurer’s hiring of independent legal counsel. First, it must be noted that “No governing body may spend public funds for a private purpose, or beyond its corporate purpose.” Op. S.C. Att’y Gen., 1985 WL 259128 (Feb. 15, 1985) (citing Elliott v. McNair, 250 S.C. 75, 156 S.E.2d 421 (1967) and Paslay v. Brooks, 198 S.C. 345, 17 S.E.2d 865 (1941)). The county “may not employ counsel [or pay counsel with public funds] in matters in which it is not directly interested or which lie outside its corporate purpose.” Id. (quoting 56 Am. Jur. 2d, Municipal Corporations, § 220). Thus, the County may not expend any public funds on the County Treasurer’s legal fees if the County Council determines that the representation does not relate to a public purpose. As this Office has previously stated, “determination of whether or not the [matter is one in which the local government] . . . is directly interested, and consequently, a matter which involves public purpose . . . is to be made by the governing body subject of course, to final determination by a court of competent jurisdiction if challenged.” Op. S.C. Att’y Gen., 1985 WL 259128 (Feb. 15, 1985) (quoting Op. S.C. Att’y Gen., 1977 WL 24548 (July 1, 1977)).

If the County Council does determine that the bills incurred by the County Treasurer relate to legal representation which the County Treasurer had authority to engage and were incurred for a public purpose, then we see no reason that the County Council could not ratify those bills and thereby approve the appropriation. Such a determination would, however, have to be made by the County Council.

Notably, if the County Treasurer undertakes litigation against the County and prevails, there are certain circumstances where the County may be made to pay the legal fees pursuant to

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S.C. Code Section 15-77-300. See e.g., Eargle v. Horry Cnty., 344 S.C. 449, 456-457, 545 S.E.2d 276, 280-281 (2001) and Heath v. Aiken Cnty., 295 S.C. 416, 420-421, 368 S.E.2d 904, 906 (1988). We would encourage you, and County Council, to review these cases and determine how their holdings might apply in this situation.

Sincerely,



David Leggett
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General Emeritus

CC: Jasper County Treasurer Michael T. Skinner