



HENRY McMASTER  
ATTORNEY GENERAL

June 19, 2006

Robert M. Bell, Esquire  
County Attorney, Aiken County  
Post Office Box 421  
Graniteville, South Carolina 29829

Dear Mr. Bell:

We received your letter requesting an Attorney General's opinion concerning a county clerk of court's authority to add personnel. By way of background, you stated:

Historically the Aiken County Clerk of Court has channeled payments she receives from the South Carolina Department of Social Services Child Support Enforcement Division through the General Fund of Aiken County. The county has in turn included the funds in the Clerk's budget for costs incidental to the mandated purpose for the use of those funds including funding of personnel in the Clerk's office required for the proper administration of those funds.

...

During the current budget year the Clerk of Court has requested additional positions for her office and the Aiken County Council has denied her request for the additional positions. Recently the Clerk advised the treasurer and the county council that she was hereafter going to take charge of the Title IV-D funds rather than have them put into the county general fund as has been historically the case. Upon legal advise from this office, the county council has not attempted to interfere with the Clerk's efforts in this regard but has requested a budget from the Clerk's administration of those funds.

*Request Letter*

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An issue has now arisen as to whether the Clerk may independently create new positions and employ additional personnel for her office which are not provided for and authorized in the official budget for her office as adopted by county council.

Thus, you request an opinion as to whether the Aiken County Clerk of Court may properly add personnel "without concurrence of the county governing body."

### Law/Analysis

As we stated in a previous opinion, "[a] county council is generally considered as having only limited authority in dealing with the authority or duties of an elected official. . . ." Op. S.C. Atty. Gen., April 20, 2006 (citing Op. S.C. Atty. Gen., August 6, 1991). Section 4-9-30(7) of the South Carolina Code (Supp. 2005) addresses a county's authority with regard to county personnel. This section provides, in pertinent part:

Under each of the alternate forms of government listed in § 4-9-20, except the board of commissioners form provided for in Article 11, each county government within the authority granted by the Constitution and subject to the general law of this State shall have the following enumerated powers which shall be exercised by the respective governing bodies thereof:

...

(7) to develop personnel system policies and procedures for county employees by which all county employees are regulated except those elected directly by the people, and to be responsible for the employment and discharge of county personnel in those county departments in which the employment authority is vested in the county government. This 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. Any employee discharged shall follow the grievance procedures as established by county council in those counties where the grievance procedures are operative, retaining all appellate rights provided for in the procedures.

...

(emphasis added).

In previous opinions, we interpreted this provision as subjecting personnel employed by a public official to the general personnel policies and procedures generally applicable to county employees. Op. S.C. Atty. Gen., October 29, 1996. However, we concluded section 4-9-30(7) “vests in elected officials . . . the authority to employ and discharge the county personnel within their departments.” Moreover, we determined: “Such authority would necessarily include assessing the functions and responsibilities of the department . . . to determine how many employees are needed for the orderly conduct of business and what their duties will be.” Op. S.C. Atty. Gen., February 21, 1991.

Section 14-17-10 of the South Carolina Code (1976) provides for the election of clerks of court in each county by the qualified electorate. In an opinion dated February 18, 1983, we specifically addressed the issue of a county council’s authority over a clerk of court’s personnel.

Since the Clerk of Court is an elected official, the County Council does not have responsibility for the employment and discharge of county personnel in the Office of the Clerk of Court. Section 4-9-30(7), Code of Laws of South Carolina, 1976. Therefore the Clerk of Court has the power under the Home Rule Act to employ and discharge all personnel employed in the Office of the Clerk of Court. Those personnel would, however, be subject to general “personnel system policies and procedures for county employees by which all county employees are regulated.” *Id.* Furthermore, the Council also has the authority “to establish such . . . positions in the County as may be necessary and proper to provide services of local concern for public purposes . . .” § 4-9-30(6), *supra*. However, none of the above described powers or actions by the County Council can infringe upon the general authority of the Clerk of Court, as an elected official, to make all decisions as to employment and discharge of personnel in the Office of the Clerk of Court.

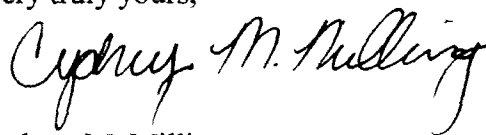
Op. S.C. Atty. Gen., February 18, 1983.

This Office has long recognized the principle that “we will not overrule our prior opinions unless clearly erroneous or unless applicable law has changed.” Op. S.C. Atty. Gen., September 8, 2005. We find no pertinent changes in the law requiring us to overrule our prior opinions. Thus, based on section 4-9-30(7) and our prior opinions as cited above, we conclude the Aiken County Clerk of Court, as an elected official, has the authority manage the personnel in her office, including

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hiring and discharging personnel, without oversight to the Aiken County Council. Furthermore, this authority also includes the ability "to determine how many employees are needed for the orderly conduct of business and what their duties will be." Op. S.C. Atty. Gen., February 21, 1991.

Very truly yours,



Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General