



ALAN WILSON
ATTORNEY GENERAL

April 29, 2011

The Honorable Dean Fowler, Jr.
Treasurer, Florence County
180 North Irby Street MSC-Z
Florence, South Carolina 29501

Dear Mr. Fowler:

We received your request for advice as to a county council's use of its budgetary authority to control the services provided by an elected official. Specifically, you state as follows:

The Florence County Council is attempting to direct the Offices of Elected Officials by the budgetary process. They are tying the budget to specific employees and positions in order to compel the Elected Executive to comply with their directives as to service provided by the Elected Executives Offices. Can the County Council usurp the authority of the Elected Official's offices?

Law/Analysis

The Legislature gives county governments broad authority in chapter 9 of title 4 of the South Carolina Code. Section 4-9-25 of the South Carolina Code (Supp. 2010) states:

All counties of the State, in addition to the powers conferred to their specific form of government, 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.

More specifically, the Legislature, through the Home Rule Act, gave county councils broad authority with regard to budgets and how to appropriate funds for county purposes. See S.C. Code Ann. §§ 4-9-30(5)(a) (Supp. 2010) (giving county governments the power to “make appropriations for functions and operations of the county . . .”); 4-9-140 (1986) (instructing county councils to annually adopt operating and capital budgets for the year).

Numerous opinions of this Office discuss the broad authority of county councils’ to make budgetary decisions. See Ops. S.C. Atty. Gen., January 8, 2007; October 29, 1992; August 14, 1985; February 7, 1978. However, these opinions also recognized that 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. Atty. Gen., February 7, 1978. See also, Op. S.C. Atty. Gen., August 14, 1985 (stating “a governing body cannot indirectly by a reduction of compensation of an office abolish it where it is not empowered to abolish the office directly.”).

Furthermore, while section 4-9-30(7) of the South Carolina Code (Supp. 2010) gives county governing bodies the authority to employ and discharge county personnel, this provision also 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.” Therefore, we continue to advise that a county council’s have no authority with regard to the employment or discharge of personnel serving an elected official within the county.

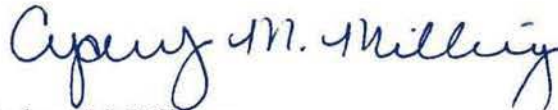
Conclusion

County councils maintain vast authority with regard to the operations of counties. However, county councils are in limited in that they cannot enact any regulations, resolutions, or ordinances that conflict with State law. Accordingly, the Florence County Council (the “County Council”) cannot interfere with any of the duties and responsibilities given to elected county officials under State law. Moreover, while the County Council has broad authority with regard to budgetary decisions, this authority is somewhat limited by the fact that the County Council must provide County elected officials with a budget sufficient to perform the functions of their

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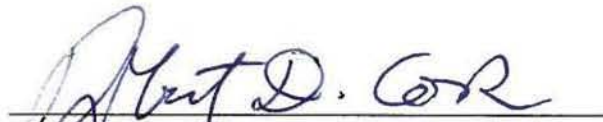
offices. Moreover, in accordance with section 4-9-30(7) the County Council does not have authority to employ and discharge personnel under the direction of County elected officials.

Very truly yours,



Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General