

## The State of South Carolina



## Office of the Attorney General

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September 30, 1986

The Honorable G. Ralph Davenport, Jr.  
Member, House of Representatives  
Post Office Box 1301  
Spartanburg, South Carolina 29304

Dear Representative Davenport:

Attorney General Medlock has referred your letter of September 19, 1986, to the Opinion Section for response. You had inquired in your first several questions, as to a political subdivision (the State or a city or county) using profits generated by a publicly-owned entity or public agency or requesting that the entity or agency turn over monies to the political subdivision to be used for budgetary purposes. For example, Section 4-9-140, Code of Laws of South Carolina (1976, as revised), provides in part:

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.

....

As you have been advised on several occasions, a political subdivision has a great deal of discretion in establishing its budget, identifying revenue sources, providing sufficient revenues to meet its proposed budget, and expending those revenues. It would be inappropriate for this Office to comment

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further on the budgetary process and sources of funding of such political subdivisions, as such could be viewed as interference by this Office in an area over which the governing body of such political subdivision exercises exclusive control. You may wish to discuss your concerns with the attorney of the subdivision of which you are concerned.

You have also asked about possible legal recourse of a member of a publicly-owned entity who has been removed before his term of office has been completed. You have stated that the individual had been duly appointed by legally elected officials of a political subdivision. The answer to this question depends upon a number of factors, of which this Office has no knowledge: why the individual was removed and by whom; whether a statute or ordinance may have removal provisions which were or were not followed; whether any due process was required and, if so, accorded; whether dual office holding played a part; and so forth. We would suggest that the individual in question discuss the matter, including all relevant factors, with a private attorney to determine whether he may have any recourse, since this Office would not be authorized to discuss this private matter with the individual.

Your final question relates to the act adopted in 1986 bearing ratification number 579, which amended Section 4-9-90 of the Code of Laws of South Carolina (1976, as revised), pertaining to election of county council members from single-member districts. In part, the statute now reads:

Council members must be elected from defined single-member election districts unless otherwise determined under the provisions of subsections (a), (b), or (c) of Section 4-9-10 or under the provisions of any plan ordered by a court of competent jurisdiction prior to May 1, 1986. ...  
[Added portion emphasized.]

You have asked whether, by this enactment, the political subdivision affected would have an obligation to notify and allow the affected citizenry an opportunity to adopt a new form of government without the petition drive regulations enacted in the Home Rule Act (Act No. 283 of 1975). We would advise that the only mechanism for adopting a new form of county government is found in Section 4-9-10(c) of the Code, enclosed. However, you are referencing a situation in which a court of competent jurisdiction has apparently acted; unless or until a higher court rules otherwise, whatever mandates the court has given

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must be followed. If the court has not declared otherwise, the provisions of Section 4-9-10(c) remain applicable to selecting a new form of government.

Sincerely,


*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/an

Enclosure

REVIEWED AND APPROVED BY:

  
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Robert D. Cook  
Executive Assistant for Opinions