The State of South Carolina

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Walter H. Parham, Esquire
Greenville County Attorney
100 Courthouse Annex
Greenville, South Carolina 29601

Dear Mr. Parham:

You have asked this Office whether any provision of the Home Rule Act or any other provision would prohibit the Greenville County Council from approving the funding for additional deputies for the County in a supplemental appropriation, despite the fact that such deputy positions were not funded by County Council in the adoption of its annual appropriation ordinance. You have informed us that the sheriff requested funding for several deputy positions, but the County Administrator recommended to Council that only one deputy position be funded. You now wish to know whether Council would be prohibited from funding additional deputy positions in a supplemental appropriations measure.

Under the Home Rule Act, budgets of counties governed by the council-administrator form of government are proposed by the administrator and then submitted to council pursuant to Sections 4-9-630(4) and 4-9-640, Code of Laws of South Carolina (1976). The only apparent requirements in the Home Rule Act relevant to adoption of annual operational and capital budgets would be found in Sections 4-9-130 (public hearing required) and 4-9-140 (adoption of budget and supplemental appropriations). There appears to be no prohibition in the Home Rule Act against council's modifying a budget as submitted to a county council by the administrator or against an official whose office is funded from county appropriations requesting additional funding from a county council.

REQUEST LETTER

While the Home Rule Act would not prohibit such amendments to the budgetary process, consideration must be given to ordinances and procedures of Greenville County. Pursuant to Section 4-9-110, a county council is empowered to adopt its own operating rules. Section 6.1-22 of the Greenville County Code contains several relevant provisions concerning adjustments to the county budget:

> (a) Supplemental appropriations. A supplemental appropriation is an allocation of funds to a county department or agency for a specific purpose not anticipated when the original budget appropriation was approved.
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> The county council will consider a request for supplemental appropriations only under the following criteria:
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> (2) That new positions ... will not be eligible for consideration except under extreme emergencies where the lack of additional personnel ... would not allow the department to provide essential, budgeted services.
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> * * *
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> The supplemental request must be an original one created by a change in circumstances and not previously considered either in the regular annual budget cycle or during any other time.
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> * * *

It would appear that part (2) of this section would permit County Council to determine that an extreme emergency exists and that additional personnel would be required to provide essential, budgeted services, thus permitting the funding of the four

additional deputies. However, the requirement that the request cannot have been considered previously would at first blush appear to preclude reconsideration.

As noted above, Section 4-9-110 permits a county council to adopt its own operating rules and, of course, to modify those rules. Moreover, one council cannot restrict the power of its successors to amend ordinances. 6 McQuillin, Municipal Corporations, § 21.02; Op. Atty. Gen., No. 83-89, dated November 15, 1983. Should County Council choose to adopt a supplemental appropriation notwithstanding Section 6.1-22 of the county's code of ordinances, such an appropriation not in conformity with the ordinance would serve as an amendment thereto. The rule of construction is set forth as follows:

> Many decisions ... recognize the rule that in some circumstances a statute may be amended by implication by a later enactment, notwithstanding no mention of the former act is made in the subsequent act. In this respect, an "implied amendment" has been defined as an act which purports to be independent of, but which in substance alters, modifies, or adds to a prior act. The doctrine of implied amendment of an earlier statute by a later one rests on the inference that the legislature cannot be supposed to have intended that there should be two distinct enactments embracing the same subject matter in force at the same time, and that the new statute being the most recent expression of the legislative will must be deemed a substitute for the previous enactment and the only one having the force of law.

82 C.J.S., Statutes, § 252.

The United States Supreme Court case of Manigault v. Springs, 199 U.S. 473, 50 L.Ed.2d 274 (1905) is illustrative of the foregoing rule. In Manigault, a statute required the South Carolina legislature to follow certain procedures, including the necessity of a petition, prior to enacting private legislation. A subsequent legislature refused to follow the statutory procedure in enacting such legislation. The Supreme Court deemed the statutory procedure as having been amended by a subsequent legislature. The Court concluded:

> This law was doubtless intended as a guide to persons desiring to petition the legislature for special privileges, and it would be a good answer to any petition for the granting of such privileges that the required notice had not been given; but it is not binding upon any subsequent legislature, nor does the noncompliance with it impair or nullify the provisions of an act passed without the requirement of such notice. (Emphasis added.)

199 U.S. at 487. Since the rules of construction applicable to statutes are also generally applicable to ordinances, see Barker v. Smith, 10 S.C. 226 (1878), the foregoing rule would be controlling in this situation. Thus, regardless of the language of the cited provisions of the County's Code, such a supplemental appropriation may nevertheless be enacted if County Council desires to exercise such discretion. 1/ Of course, it goes without saying that should County Council desire to depart from Section 6.1-22 by supplemental appropriation, such must be done by ordinance, following the mandates of Sections 4-9-120 and 4-9-140, because "[a]n ordinance cannot be amended, repealed or suspended by an order or resolution, or other act by a council of less dignity than the ordinance itself." 6 McQuillin, Municipal Corporations, § 21.04. In other words, the usual requirements for the adoption of an ordinance, including three

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1/ It should also be noted that once enacted, an ordinance, like a statute, is presumed to have been properly enacted, unless the contrary appears on the face of the ordinance itself. See, 6 McQuillin, Municipal Corporations, §§ 20.06, 20.07; see also, Town of Brookland v. Broad River Power Co., 172 S.C. 115, 125, 173 S.E. 71 (1934).

readings, would be mandated. This requirement would remain regardless of whether Council should amend Section 6.1-22 expressly or impliedly as set forth above. And, as with any other appropriation, any such decision would remain with County Council.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP:djg

REVIEWED AND APPROVED BY:

Robert D. Cook

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