9221-9771

ALAN WILSON
ATTORNEY GENERAL

July 28, 2014

Leesa Benggio
Interim Director
South Carolina State Library
PO Box 11469
Columbia, SC 29211

Dear Ms. Benggio:

In a prior opinion dated March 27, 2014 (Op. S.C. Atty. Gen., March 27, 2014 (2014 WL 1284637)) concerning the Beaufort County Library Board of Trustees ("Board"), this Office determined that the Board reported to and was accountable to the county administrator and not to the county council. You have asked us to reconsider our conclusion.

LAW/ANALYSIS:

Both the South Carolina Code and our prior opinions are pertinent in our reconsideration. Beaufort County has a council-administrator form of government. The county administrator is given the following authority:

> The council shall employ an administrator who shall be the administrative head of the county government and shall be responsible for the administration of all the departments of the county government which the council has the authority to control.

S.C. Code Ann. § 4-9-620 (1976 Code, as amended) (emphasis added).

Section 4-9-35 governs the establishment and operation of county public library systems. It states:

> (A) Each county council shall prior to July 1, 1979, by ordinance establish within the county a county public library system, which ordinance shall be consistent with the provisions of this section; *provided,* however, notwithstanding any other provision of this chapter, the governing body of any county may by ordinance provide for the composition, function, duties, responsibilities, and operation

> of the county library system. County library systems created by such ordinances shall be deemed a continuing function of county government and shall not be subject to the provisions of § 4-9-50[1] except as state funds are specifically appropriated under other provisions of law.
>
> (B) Each county library system shall be controlled and managed by a board of trustees. . .appointed by the county council. . . .

S.C. Code Ann. § 4-9-35 (1976 Code, as amended).

In a prior opinion, we determined that the chief librarian reported to the library board and not to the county administrator based on the following rules of statutory interpretation:

> '[s]ections which are part of the same statutory law of the State must be construed together. In construing statutory language, the statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect, if it can be done by any reasonable construction. Statutes pertaining to the same subject matter must be harmonized if at all possible.' In Interest of Doe, 318 S.C. 527, 531-32, 458 S.E.2d 556, 559 (Ct. App. 1995)(citations omitted). However, '[w]here there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect.' Capco of Summerville, Inc. v. J.H. Gayle Constr. Co., Inc., 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006).

Op. S.C. Atty. Gen., July 11, 2008 (2008 WL 3198122).

We further opined:

> by the provisions contained in sections 4-9-35 et seq., the Legislature removed some authority from the County when it created county public

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[1] Section 4-9-50 provides:

Whenever the General Assembly shall provide by general law for the use of county personnel, facilities or equipment to implement such general law or rules and regulations promulgated pursuant thereto, the State agency or department responsible for administering such general law shall provide sufficient funds for county implementation from appropriations to that agency of department; *provided,* that this section shall not apply to construction of or improvement to county capital improvements or other permanent facilities required by the provisions of the general law or regulations promulgated pursuant thereto.

S.C. Code Ann. § 4-9-50 (1976 Code, as amended).

> library systems. . .the Legislature specified that county public library systems are to be "controlled and managed" by their boards of trustees. S.C. Code Ann. § 4-9-35(B).

Id.

While the general law provides for the county administrator to be in charge of all departments "controlled" by the county council, section 4-9-35 empowers the library board of trustees to "control and manage" the county public library systems. Since section 4-9-35 specifically applies to county public library systems, it is an exception to the general law and it means that the county council does not control the library system. Since the county administrator does not have greater authority than the county council, the county administrator is not responsible for the administration of the library board of trustees.

It is true that the library board has to submit a budget to the county council to fund the operation and programs of the library system; annually file a report of its operations and expenditures with the county council; and have all contracts and agreements as well as conveyances and purchases of real property approved by county council. S.C. Code Ann. §§ 4-9-36, 4-9-37 (1976 Code, as amended). These requirements would seem to indicate that the library board is being controlled by the county council.

However, county councils are granted certain powers under section 4-9-30 of the Code. Section 4-9-30 provides:

> 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:
>
> > (2) to acquire real property by purchase or gift; to lease, sell or otherwise dispose of real and personal property; and to acquire tangible personal property and supplies;
> >
> > (3) to make and execute contracts. . .
> >
> > (5) to. . .make appropriations for functions and operations of the county, including, but not limited to, appropriations for. . . libraries. . .

S.C. Code Ann. § 4-9-30 (1976 Code, as amended).

Certain powers cannot be delegated to others. We have formerly opined:

> It is well recognized that:
>
> > [t]he right of a county board to delegate its authority depends on the nature of the duty to be performed. Powers involving the exercise of judgment and

> discretion are in the nature of public trusts and cannot be delegated to a committee or agent. Duties which are purely ministerial and executive and do not involve the exercise of discretion may be delegated by the board to a committee or to an agent, an employee, or a servant.

20 C.J.S., Counties, § 89. Another treatise similarly states:

> While legislative or discretionary powers or trusts devolved by charter or law on a council or governing body, or a specified board or officer cannot be delegated to others, it is equally well established that ministerial or administrative functions may be delegated to subordinates. The law has always recognized and emphasized the distinction between instances in which a discretion must be exercised by the officer of department or governing body in which the power is vested, and the performance of merely ministerial duties by subordinates and agents.

McQuillin, Municipal Corporations, § 10.41.

Op. S.C. Atty. Gen., March 10, 2004 (2004 WL 736933).

Section 4-9-30 expressly provides that the powers granted within the statute to counties shall be exercised by the county councils subject to the State constitution and general laws. Making appropriations for county entities, entering into contracts, and acquiring and disposing of real estate are clearly duties which require discretion and judgment. Since county councils are not permitted to delegate these duties to the library boards or to other county entities, the county councils are not controlling the library boards. What is also significant is that "all funds appropriated, earned, granted or donated to the library system or any of its parts shall be used exclusively for library purposes." See S.C. Code Ann. § 4-9-37, supra.

We opined in another opinion that the Legislature intended for county library systems to be uniform. In Op. S.C. Atty. Gen., May 23, 1983 (1983 WL 181894), we stated:

> [t]here is ample evidence that the General Assembly intended county library systems to be uniform throughout the State. As noted above, Section 4-9-35(A) provides that county library systems 'shall be consistent with the provisions of this section.' The title to Act No. 564 of 1978, which enacted Sections 4-9-35 through 4-9-39, provides:
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> > An Act To Amend The Code of Laws of South Carolina, 1976, By Adding Section 4-9-35, 4-9-36, 4-9-37, 4-9-38 And 4-9-39, So As To Provide For The Establishment By County Council Of County Library Systems On A Uniform Basis, Provide For the Powers and

> Responsibilities of County Libraries and The Governing Bodies Thereof. (Emphasis added.)
>
> It is well settled that the title or caption of an act may be considered to aid in the construction of a statute and to show the intent of the Legislature. Lindsay v. Southern Farm Bureau Cas. Ins. Co., 258 S.C. 272, 188 S.E.2d 374 (1972). University of S.C. v. Elliott, 248 S.C. 218, 149 S.E.2d 433 (1966). It is clear from the title to Act 564 and the first sentence of Section 4-9-35(A) that the General Assembly intended to create uniform county library systems and, therefore, provided that such libraries would be managed by a board of trustees whose duties were further delineated by the General Assembly.

Also, we have opined that "the 1978 legislation was intended to provide for a mandatory county library system to be uniform throughout the State." See Op. S.C. Atty. Gen., April 3, 1979 (1979 WL 42903).

We have explained in a prior opinion that the Legislature intended for county library systems to be uniform even though the language of section 4-9-35[2] appears to be contradictory:

> Did the General Assembly intend by adding the proviso to Section 4-9-35 to permit County Councils to establish for library systems different from those established by the General Assembly? We think not. First, it must be recognized that exceptions or provisos in a statute should be strictly construed. See, Barringer v. Dinkler Hotels Co., 61 F.2d 82 (4th Cir. 1932). The proviso and the main provision of a statute are to be read together with a view to carry into effect the whole purpose of the law. Gasque, Inc. v. Nates, 191 S.C. 271, 2 S.E.2d 36 (1939). It would be absurd to conclude that the General Assembly would provide in the same sentence that counties shall establish by ordinance county library systems 'which ordinance shall be consistent with the provisions of this section' and then include a proviso that the counties could by ordinance change their system to be inconsistent with the state statute. Moreover, it would defeat the stated purpose of the statute to create 'uniform' library systems. It is the opinion of this office that the proviso in Section 4-9-

[2] As stated above, section 4-9-35 provides:

> (A) Each county council shall prior to July 1, 1979, by ordinance establish within the county a county public library system, which ordinance shall be consistent with the provisions of this section; *provided, however,* notwithstanding any other provision of this chapter, the governing body of any county may by ordinance provide for the composition, function, duties, responsibilities, and operation of the county library system. . . .

S.C. Code Ann. § 4-9-35, supra (emphasis added to proviso).

> 35(A) merely permits the County Council to further delineate the duties and responsibilities of the Boards of Trustees consistent with the state statute and does not permit County Council to remove duties conferred on the Boards by state law. 3

Op. S.C. Atty. Gen., May 23, 1983, supra.

Since the Legislature requires county library systems to be uniform, it is our opinion that requiring the library board of trustees to be responsible to the county administrator would interfere with the operation of library systems on a uniform basis.

It should also be noted that the county does not have constitutional authority to interfere with the uniformity of the county library system. S.C. Const. art. VIII § 14 provides:

> In enacting provisions required or authorized by this article, general law provisions applicable to the following matters shall not be set aside. . .(6) the structure and the administration of any governmental service or function, responsibility for which rests with the State government or which requires statewide uniformity.

Brashier v. S.C. Dept. of Transportation, 327 S.C. 179, 490 S.E.2d 8 (1997) (overruled on other grounds by I'on, LLC v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000)) explains:

> Article VIII, section 14 "precludes the legislature from delegating to counties the responsibility for enacting legislation relating to the subjects encompassed by that section." *Robinson v. Richland County Council,* 293 S.C. 27, 30, 358 S.E.2d 392, 395 (1987). When construing Article VIII, section 14, this Court has consistently held a subject requiring statewide uniformity is effectively withdrawn from the field of local concern. *See, e.g., Davis v. County of Greenville,* 322 S.C. 73, 76, 470 S.E.2d 94, 96 (1996) ("Article VIII, § 14 limits the powers local governments may be granted"); *Kramer v. County Council,* 277 S.C. 71, 282 S.E.2d 850 (1981) (per curiam); *Douglas v. McLeod,* 277 S.C. 76, 282 S.E.2d 604 (1981).

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[3] In Op. S.C. Atty. Gen., May 23, 1983, supra, we had the following footnote:

> Our conclusion is not altered by language in § 4-9-36, that the Board's powers shall not be inconsistent with the 'general policies' of the county governing body. Instead, this language is indicative of the legislative intent 'to define the relationship between county government and county library systems and to insure the continued operation and support of such libraries on a uniform basis.' Act No. 564 of 1978, § 1. The above provision in § 4-9-36 thus was simply intended to preserve the county governing body's authority where § 4-9-35, et seq., is not controlling. See also, § 4-9-37(b).

Our former opinions have made it clear that statewide uniformity is required of the county library systems. Since the county library systems involve a statewide function, the county does not have the authority to force the library board of trustees to report to the county administrator.

CONCLUSION

This Office concludes:

1. Since the county council does not "control" the library board of trustees pursuant to section 4-9-620, the county administrator is not responsible for the administration of the library board of trustees.

2. Our former opinions have made it clear that statewide uniformity is required of the county library systems. Since the county library systems involve a statewide function, the county does not have the authority to force the library board of trustees to report to the county administrator.

As a result of the aforesaid, we amend our March 27, 2014 opinion to the extent that the Beaufort County Library Board of Trustees is not accountable to the county administrator. The remainder of our former opinion remains valid.

Sincerely,

Elinor V. Lister

Elinor V. Lister
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General