

1983 WL 181894 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 23, 1983

***1 SUBJECT: Libraries**

Proposed Amendments to Pickens County Ordinance No. 30 are inconsistent with Sections 4-9-35, et seq., of the South Carolina Code of Laws, 1976.

Librarian
South Carolina State Library

QUESTION:

Whether proposed amendments to Pickens County Ordinance No. 30 would cause the Pickens County Library System to fail to comply with Sections 4-9-35, et seq., of the South Carolina Code of Laws (1976)?

OPINION:

Yes. Sections 2(1) and 3(a) of the proposed Amendment to Pickens County Ordinance No. 30 do not comply with [Sections 4-9-35, et seq., of the Code](#). Section 4-9-36 vests with the Board of Trustees of the County Library the authority to employ a chief librarian who shall be responsible to the Board for the administration of the library services program and the selection of library staff members. Under the proposed amendment, the Library Board will merely make a recommendation to the County Council for the employment of a chief librarian and the chief librarian will be responsible to the County Council, not the Board, for the administration of the library program and hiring of staff. Section 3(a) of the proposed amendment would only permit the Board of Trustees to recommend to County Council the geographical placement of a headquarters library and branches. The establishment or discontinuance of library branches and the operation hours of libraries will be at the discretion of county council. Under Section 4-9-37 and the present Pickens County Ordinance No. 30, this authority is now vested in the Board of Trustees. Unquestionably, both amendments change the Board of Trustees' authority to control and manage the public library system.

Having concluded that the proposed ordinance is not consistent with the provisions of [Section 4-9-35, et seq.](#), it must now be determined whether counties are required to comply with those provisions. [Section 4-9-35\(A\)](#) provides:

Each County Council shall prior to July 1, 1979, by ordinance establish within a county a county library system, which ordinance shall be consistent with the provisions of this system; provided, however, notwithstanding any other provision of this chapter, the governing body of any county may by ordinance provided for the composition, function, duties, responsibilities and operation of the county library system. . . .

There 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:

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.)

*2 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.

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 4-9-35\(A\)](#) 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.¹

CONCLUSION

It is the opinion of this office that the General Assembly required that uniform county library systems be established consistent with the provisions of [Section 4-9-35](#), et seq., of the Code. By removing from the Board of Trustees the duty and authority to employ a chief librarian who shall be responsible to the Board and to establish a headquarters library and branch libraries as the Board deems appropriate, the Pickens County Council will, by its proposed amendment, establish a library system inconsistent with the [Sections 4-9-35](#), et seq., in that it removes part of the Board's authority to control and manage the county library system.

Richard B. Kale, Jr.
Senior Assistant Attorney General

PROPOSED AMENDMENTS—ORDINANCE NO. 30

TO ESTABLISH A COUNTY LIBRARY SYSTEM FOR PICKENS COUNTY

*3 SECTION 1: No Change

SECTION 2: 1st Paragraph—No Change

(1) Recommend to County Council the employment of a chief librarian whose qualifications and credentials shall meet the certification requirements of the State Library Board, and who shall be responsible to County Council for the administration of the program and the selection of library staff members. The chief librarian and all library staff members shall be employees of Pickens County Council and employed under the personnel policies and compensation plans established by the Council;

(2) No Change

(3) No Change

(4) No Change

(5) No Change

(6) No Change

(7) No Change

(8) Receive on behalf of Pickens County Council grants, appropriations, gifts and donations from any private or public source for the operation, expansion or improvement of the library system, provided however, all such funds shall be received and disbursed by the Treasurer of Pickens County in keeping with the policies and procedures of Pickens County Council.

(9) Omit

SECTION 3:

(a) Provide and make available to the residents of the county books and library materials and recommend to County Council the establishment of a headquarters library and branches and subdivisions thereof in appropriate geographical areas of the county and the operation of one or more bookmobiles over routes determined by the board. The establishment or discontinuance of any library branch or subdivision thereof or change in the operating hours of any headquarters, branch or subdivision thereof shall be at the discretion of County Council.

(b) No Change

(c) No Change

(d) Omit

SECTION 4: 1st Paragraph—No Change

All employees of the County public library shall be subject to the provisions of item (7) of [Section 4-9-30 of the Code of Laws of South Carolina](#), 1976 and to all policies and procedures established by the Pickens County Council.

SECTION 5: No Change

SECTION 6: No Change

SECTION 7: No Change

SECTION 8: This ordinance as amended shall become effective July 1, 1983.

Approved upon third reading

Marion C. Owens

Chairman

AN ORDINANCE

TO ESTABLISH A COUNTY LIBRARY SYSTEM FOR PICKENS COUNTY, PROVIDE FOR THE POWERS AND RESPONSIBILITIES OF THE COUNTY LIBRARY AND THE APPOINTMENT, POWERS AND DUTIES OF THE LIBRARY BOARD.

Be it enacted by the County Council of Pickens County, South Carolina.

SECTION 1. Pursuant to the provisions of Act 564 of 1978 there is hereby established the Pickens County Library System. The county public library system shall be controlled and managed by a board of trustees consisting of eleven members appointed by the county council for terms of four years and until successors are appointed and qualify except that of those members initially appointed one-half of such appointees less one shall be appointed for terms of two years only. Previous service on a county library board prior to the enactment of this ordinance establishing the board shall not limit service on the board. Vacancies shall be filled in the manner of the original appointment for the unexpired term. To the extent feasible, members shall be appointed from all geographical areas of the county.

*4 The board shall annually elect a chairman, vice-chairman, secretary-treasurer and such other officers as it deems necessary. The board shall meet not less than four times each year and at other times as called by the chairman or upon written request by a majority of the members.

SECTION 2. The board as provided for in Section 1 shall be authorized to exercise powers as to the policies of the county library which shall not be inconsistent with the general policies established by the council, and pursuant to that authority shall be empowered to:

- (1) Employ a chief librarian whose qualifications and credentials shall meet the certification requirements of the State Library Board, and who shall be responsible to the county library board for the administration of the program and the selection of library staff members required to carry out the functions of the library system;
- (2) Purchase, lease, hold and dispose of real and personal property in the name of the county for the exclusive use of the county public library system. Provided, however, any such conveyance, lease or purchase of real property shall be by the county council;
- (3) Acquire books and other library materials and provide for use thereof throughout the county;
- (4) Accept donations of real property, services, books and other items suitable for use in the library system;
- (5) Designate or mark equipment, rooms and buildings, and other library facilities to commemorate and identify gifts and donations made to the library system;
- (6) Cooperate or enter into contracts or agreements with any public or private agency which result in improved services or the receipt of financial aid in carrying out the functions of the library system. Provided, however, such contracts and agreements shall be subject to approval by the county council;
- (7) Enter into contracts or agreements with other counties to operate regional or joint libraries and related facilities. Provided, however, such contracts and agreements shall be subject to approval by the county council;
- (8) Receive and expend grants, appropriations, gifts and donations from any private or public source for the operation, expansion or improvement of the library system;
- (9) Take any actions deemed necessary and proper by the board to establish, equip, operate and maintain an effective library system within limits of approved appropriations of county council.

SECTION 3. In addition to the powers and duties prescribed in Section 2 the board shall:

(a) Provide and make available to the residents of the county books and library materials and in the fulfillment of this function shall establish a headquarters library and may establish branches and subdivisions thereof in appropriate geographical areas of the county within the limits of available funds. The board may operate one or more bookmobiles over routes determined by the board;

(b) Adopt regulations necessary to insure effective operation, maintenance and security of the property of the library system. Provided, however, such regulations shall not be in conflict with policy or regulations established by the county council;

***5** (c) Annually, at a time designated by the county council, submit to the council a budget for the ensuing fiscal year adequate to fund the operation and programs of the library system. Such budget shall list all funds which the board anticipates will be available for the operation of the library system. All funds appropriated, earned, granted or donated to the library system or any of its parts shall be used exclusively for library purposes. All financial procedures relating to the library system, including audits, shall conform to the procedures established by the county council;

(d) Annually file a detailed report of its operations and expenditures for the previous fiscal year with the county council.

SECTION 4. All state laws and regulations relating to county public library systems shall apply to the library systems created pursuant to Section 1.

All employees of a county public library shall be subject to the provisions of item (7) of [Section 4-9-30 of the Code of Laws of South Carolina](#), 1976.

SECTION 5. The county public library system shall be funded by annual appropriations by the county council including millage, if any, levied specifically for the county public library system plus aid provided by the state and federal governments and other sources. If the county council levies a tax specifically for the support of the county public library system, such tax shall apply to all persons and corporations subject to school taxes.

SECTION 6. All assets and property, both real and personal, owned by any county library prior to the creation of a library system under this ordinance shall be transferred to the county by the persons or entities owning title thereto; provided, however, that all such assets and property shall be used exclusively for library purposes.

SECTION 7. Notwithstanding the provisions of Section 1 of this ordinance, members of any county library board serving an unexpired term when the new board is created by this ordinance pursuant to the provisions of such Section 1 shall continue to serve on the board until the expiration of such unexpired term, or until July 1, 1982, whichever date is earlier, regardless of the numerical composition of the newly created board which would result from such continuing service.

SECTION 8. This ordinance shall become effective July 1, 1919.

Approved upon third reading.

Marvin W. Ellenburg
Chairman

Footnotes

- 1** 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).

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