

1983 S.C. Op. Atty. Gen. 49 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-32, 1983 WL 142703

Office of the Attorney General

State of South Carolina

Opinion No. 83-32

July 8, 1983

**\*1 SUBJECT: Taxation and Revenue—Authority of a County to Establish a Reserve Fund.**

A county may not appropriate funds to a reserve account for use and expenditure in subsequent years.

TO: Gerald C. Smoak, Esq.  
Colleton County Attorney

**QUESTION:**

A county has funds from the sale of a capital asset. May the governing body establish a reserve fund with the funds and expend the same in subsequent years for the same designated public purposes?

APPLICABLE LAW: Article VIII, § 7 and [Article X, § 7\(b\) of the Constitution of South Carolina](#); §§ 4-9-30 and 4-9-140 of the 1976 Code of Laws.

**DISCUSSION:**

The powers, duties and responsibilities of a county are provided by the General Assembly pursuant to the authority of [Article VIII, § 7 of the Constitution](#). Those powers are provided by § 4-9-30. By express language the same are subject to the Constitution and general laws of the State. [Article X, § 7\(b\) of the Constitution](#) provides in part that the county:

‘\* \* \* shall prepare and maintain annual budgets which provide for sufficient income to meet its estimated expenses for each year. \* \* \*.’

[Section 4-9-30\(5\)](#) provides that the county may:

‘\* \* \* make appropriations for functions and operations of the county \* \* \*.’

The authority is limited, however, by [§ 4-9-140](#). The section provides that the budget year is from July 1 through June 30, next. The section further provides that:

‘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 requirement of the budgets adopted. \* \* \*.’

We do not find any authority for a county to establish a reserve fund and appropriate revenue to be held for expenditure in subsequent years. All of the constitutional and statutory provisions contemplate annual budgets (appropriations and expenditures).

The general rule is that the power to do an act must be by express language or by necessary implication. In [Creech v. South Carolina Public Service Authority](#), 200 S.C. 127, 20 S.E.2d 645, the standard for implied or incidental powers was set forth as follows:

‘Only such powers as are reasonably necessary to enable corporations to carry out the express powers granted and the purposes of their creation are to be implied or are to be deemed to be incidental. Accordingly, an incidental power may be defined to be one that is directly and immediately appropriate to the execution of the specific power granted, and not one that has merely some slight or remote relation to it. Powers merely convenient or useful are not implied if they are not essential, having in view the nature and object of the incorporation. 13 Am.Jur., § 740, page 773.’

In [Southern Fruit Co. v. Porter](#), 188 S.C. 422, 199 S.E. 537, the court held:

\*2 ‘The following rule, stated in 1 Dillon on Municipal Corporations, Section 89, was adopted in [Luther v. Wheeler](#), 73 S.C. 83, 52 S.E. 874, 4 L.R.A., N.S. 746, 6 Ann.Cas. 754, as that supported by unbroken authority [page 875]: ‘It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the declared objects and purposes of the corporation—not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied.’ [Charleston Consol. Ry. & Lighting Co. v. City Council of Charleston](#), 92 S.C. 127, 75 S.E. 390.’

As stated we find no express declaration nor can one be implied. Such is fortified by the express language that requires ‘annual’ budgets and by the fact that the State’s reserve is provided for by the Constitution.

#### CONCLUSION:

A county may not appropriate funds to a reserve account for use and expenditure in subsequent years.

Joe L. Allen, Jr.  
Chief Deputy Attorney General

1983 S.C. Op. Atty. Gen. 49 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-32, 1983 WL 142703