

1978 WL 34636 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 6, 1978

*1 Mr. William E. Whitney, Jr.
Union County Attorney
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Post Office Box 266
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Dear Mr. Whitney:

This is in response to your letter of October 24, 1977, which requested assistance on five questions concerning county government. Two of the questions deal with tax matters and so I have forwarded them to Mr. Joe Allen of our tax division. The following opinions are in reply to the remaining three questions.

1. What procedure must the County Council follow in approving a payment to be made out of a contingency fund which has already been appropriated? In my opinion, an approval of such payment may be made by resolution of the County Council.

The 1975 amendment to the home rule legislation requires that '[t]he council shall take legislative action by ordinance. . . .' § 4-9-120 S. C. CODE, 1976. That legislation further directs that a county council must make its annual appropriation and any supplemental appropriations in the form of ordinances. § 4-9-140, S. C. CODE, 1976. The 1977 amendment to the home rule act creates an exception to the requirement for an ordinance, however, when funds which have already been appropriated are subsequently transferred from one use to another. Act No. 56, S. C. ACTS AND JOINT RES. 1977. A payment out of a contingency fund may be characterized as a transfer of money from the contingency fund to some other specific fund or use. 15 McQUILLIN § 39.46. The language of the 1977 amendment required only that such a transfer be 'approved' by the council. Act No. 56, *supra*. Since an ordinance is not necessary according to the statute, it must follow that approval may simply be in the form of a resolution by the council.

This opinion is limited strictly to the form which the approval may take. It does not address other considerations which might be pertinent, such as permissible uses of contingency funds or permissible sizes of such funds in the annual appropriation ordinance.

2. May the county council enact an ordinance that forbids the open display or open consumption of beer or wine on school or church grounds in the county? In my opinion, the county council may enact such an ordinance with respect to public school property, but it may not enact such an ordinance with respect to church property used for non-commercial purposes.

Section 4-9-30(14) S. C. CODE 1976, prohibits county councils from, inter alia, enacting ordinances 'with regard to matters provided for by general law.' The applicable general law does not regulate the open display or open consumption of beer and wine. The general state law does regulate the possession and use of alcoholic liquors. § 61-13-210 ff., S. C. CODE, 1976. Furthermore, the general state law is intended to occupy the entire field of regulating alcoholic liquors. § 61-13-760, S. C. CODE, 1976. However, according to state law, beer and wine containing less than certain specified amounts of alcohol are declared to be non-alcoholic. § 61-9-10, S. C. CODE, 1976. Therefore, the state law, which clearly occupies the entire field of regulating alcoholic liquors, does not regulate the entire field of regulating beer and wine.

Consequently a county council may enact an ordinance which forbids the open display or open consumption of beer and wine to the extent that such ordinance does not conflict with general state law.

*2 County governments are given the function of providing for public health and safety. [§ 4-9-30\(5\) S. C. CODE](#), 1976. The general law permits local governments to regulate, under its police powers, the possession or consumption of beer and wine in a public place. 6 McQUILLIN §§ 24.169, 24.184. Clearly, public school property is a public place. Therefore, in my opinion, the county may enact an ordinance which forbids the possession or consumption of beer and wine on public school property.

The general law is otherwise with respect to the possession and consumption of beer and wine on church property. Possession or consumption in non-commercial private places is not subject to ordinance. 6 McQUILLIN § 24.169. Church property would, generally, be considered non-commercial private property. Therefore, in my opinion, the county council would not be permitted to enact an ordinance which forbids the possession or consumption of beer and wine on church property insofar as that property is being used for non-commercial purposes.

5. What procedure must the county council follow in order to adopt standards and specifications for streets and roads which are accepted into the county road system, and to adopt regulations pertaining to subdivisions? In my opinion, the county council must establish a local planning council as described in Title 6, Chapter 7 of the 1976 Code of Laws, and furthermore may empower it only to recommend standards for county streets or roads and regulations for subdivisions, based, however, on a comprehensive plan.

The power to enact zoning regulations is granted to county governments in [§ 4-9-30\(9\) S. C. CODE](#), 1976. This subsection requires the county to exercise that power subject to the provisions of Chapter 7, Title 6 of the Code. As you noted, that chapter states that any county ‘may, but shall not be required to, exercise any of the powers granted by this chapter.’ [§ 6-7-10, S. C. CODE](#), 1976. Therefore, in my opinion, the county council may authorize the planning commission to develop and recommend land use regulations pertaining to subdivisions, *Id.* § 6-7-1010, *et seq.*, and to streets or roads, *Id.* §§ 6-7-570, 1090. As I read this chapter of the Code, however, it appears to require that the planning commission also develop a comprehensive plan upon which to base its land use regulations. *Id.* § 6-7-510, *et seq.* This seems to be a prerequisite to the promulgation of land use regulations. § 6-7-710.

The County Planning Act, *Id.* § 4-27-10, *et seq.*, seems to be superseded by [§ 6-7-10, et seq.](#), in that the Home Rule Act requires counties to follow the latter procedure. *Id.* [§ 4-9-30\(9\)](#).

If we can be of any further assistance to you, please let us know.

Sincerely yours,

David C. Eckstrom
Staff Attorney

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