

1978 WL 34687 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 7, 1978

*1 Honorable William E. Knotts
Senator
District No. 8
15 West Street
Williston, South Carolina

Honorable Nikki G. Setzler
Senator
District No. 8
Post Office Box 1036
West Columbia, South Carolina 29169

Gentlemen:

You have requested information from this office concerning the provisions of Act No. 283 of 1975, the 'home rule' legislation, as they affect Aiken County. I am enclosing a copy of [Sections 4-9-10 through 4-9-190 of the Code of Laws of South Carolina](#), 1976, which provisions pertain to each South Carolina county regardless of the form of county government applicable therein, as well as a copy of [Sections 4-9-610 through 4-9-670 of the Code](#), which provisions pertain to the council-administrator form of county government, the operative form in Aiken County.

Additionally, you have requested an opinion from this office as to the degree of authority and control the Aiken County Council (Council) is authorized by the 'home rule' legislation to exercise over other elected county officials such as the sheriff, clerk of court, probate judge, auditor, superintendent of education and treasurer.

First, there is no language in the provisions of the 'home rule' legislation that would provide the Council with the authority to add to the duties of, or alter the functioning of, an elected official other than in areas such as employee grievances [[§ 4-9-30\(7\), CODE OF LAWS OF SOUTH CAROLINA](#), 1976], the establishment of an accounting and reporting system [[§ 4-9-30\(8\), CODE OF LAWS OF SOUTH CAROLINA](#), 1976] and of a centralized purchasing system [[§ 4-9-160, CODE OF LAWS OF SOUTH CAROLINA](#), 1976] and the submission to it of annual fiscal reports from all county offices, departments, boards, commissions or institutions receiving county funds [[§ 4-9-140, CODE OF LAWS OF SOUTH CAROLINA](#), 1976]. [Section 4-9-30\(6\) of the Code](#) merely authorizes the Council to create and alter new agencies, to wit:

to establish such agencies, departments, boards, commissions, and positions in the county as may be necessary and proper to provide services of local concern for public purposes, to prescribe the functions thereof, and to regulate, modify, merge or abolish any such agencies, departments, boards, commissions, and positions, . . . [Emphasis added.]

That language does not empower the Council to modify or regulate existing county offices created either by statute or by the State Constitution as the case may be, except in the areas hereinabove specified. In addition, [Section 4-9-30\(5\) of the Code](#) provides in part that:

if any appropriation relative to police protection would result in reorganization or restructuring of a sheriff's department or, if any appropriation relative to police protection would limit the duties of the sheriff or provide for police protection

duplicating the duties and functions presently being performed by a sheriff, it shall not take effect until the qualified electors of the county shall first approve the appropriation by referendum called by the governing body of the county.

*2 Finally, [Section 4-9-650 of the Code](#) severely limits the authority of the county administrator over certain elected officials:

[w]ith the exception of organizational policies established by the governing body, the county administrator shall exercise no authority over any elected officials of the county whose offices were created either by the Constitution or by the general law of the State.

In my opinion, 'organizational policies' would include those areas in which the Council is expressly authorized to act, e.g., in handling employee grievance matters, in establishing accounting, reporting and purchasing systems and in formulating budgetary matters.

With reference to budgetary matters, while it is true that the Council exercises totally the budgetary authority of Aiken County and, consequently, can decrease, increase or otherwise alter appropriations for specific county offices and functions [[§ 4-9-140, CODE OF LAWS OF SOUTH CAROLINA](#), 1976], nevertheless, it cannot so decrease the appropriations of an elected official's office as to prevent the proper functioning thereof and, thus, indirectly, to abolish that official's office. See generally, 20 C.J.S. Counties §§ 100(a), (b) and (c) (1940); 56 AM.JUR.2d Municipal Corporations §§ 237 through 239 (1971); 3 MCQUILLIN MUNICIPAL CORPORATIONS § 12.118 (3rd ed. 1973); cf., [Hayes v. Brockton](#), (Mass.) 48 N.E.2d 683. Whether or not the Council has, in any particular instance, exercised its budgetary authority so as to interfere with or prevent the proper functioning of an elected official's office is a factual matter which cannot be determined by this office. Cf., [Bubier v. State](#), (Fla.) 299 So.2d 830; [McCoy v. Mayor](#), 342 N.Y.S.2d 83; [South Tiverton Volunteer Fire Dept. v. Cook](#), (R.I.) 125 A.2d 190 (disbursements could be made from fund appropriated by town council to fire department without council's preliminary approval of each expenditure).

I am enclosing herewith copies of earlier opinions dealing with questions similar to the ones which you have raised but directed to different counties.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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