

1978 WL 34835 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 5, 1978

*1 Honorable Margie H. Plunkett
Aiken County Treasurer
Post Office Box 636
Aiken, South Carolina 29801

Dear Ms. Plunkett:

In response to your inquiries concerning your office as Aiken County Treasurer, I would advise you as follows:

1. As to your July 1, 1977, letter authorizing the Farmers and Merchants Bank to honor drafts written by the Superintendent of the Aiken County School District and the Aiken County Finance Director against your Treasurer's account, I think that such authorization conflicts with your statutory duties. According to [Section 12-45-200, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, each county treasurer is required to 'keep a cash book . . . of the school fund of his county for each fiscal year,' which book is to contain, *inter alia*, 'the amount of each warrant paid by him' [emphasis added] during the fiscal year both on county school funds and on each school district's funds. This statute has been construed to mean that the county treasurer acts as the treasurer for each school district within his county [[Hay v. Leonard](#), 212 S.C. 81 at 93, 46 S.E.2d 653 (1948)] and that the county treasurer is the only official authorized to safekeep county school funds since he is the only official required by law [[§ 12-45-200](#)] to give an accounting of the receipts and disbursements of those funds. 1963 Ops.Atty.Gen. No. 1512. Just as he is the only official who must account for the receipt and disbursement of county school funds, he is also the only official expressly authorized to disburse or pay out those funds. *See also*, §§ 59-69-220 ('[n]o school warrants issued by any board of school trustees against any public school fund shall be paid by the county treasurer or other officer having the custody of such fund until . . .') and 59-69-230 ('[a]ll moneys disbursed by any county treasurer on account of school funds or taxes . . .'), [CODE OF LAWS OF SOUTH CAROLINA](#), 1976. In addition, the county treasurer is required to report monthly to the county superintendent of education 'the amount of collections and disbursements made by him for the month on account of school tax and all other school funds' [[§ 59-69-240, CODE OF LAWS OF SOUTH CAROLINA](#), 1976] and to report annually to the superintendent all sums in his hands collected for school purposes and unexpended at the end of the fiscal year [[§ 59-69-250, CODE OF LAWS OF SOUTH CAROLINA](#), 1976]. All of these statutes manifest that the county treasurer is the official who is to receive, keep, account for and disburse school funds; this being so and in the absence of any statute authorizing him to delegate those duties either in whole or in part to another public official, he cannot so delegate them. *See*, 67 C.J.S. [Officers](#) § 104 (1950). I would also point out that the failure of the county treasurer to keep the cash book required by [Section 12-45-200 of the Code](#) or to make the monthly report to the superintendent required by [Section 59-69-240 of the Code](#) can subject him to criminal penalties.

*2 Similarly, in my opinion, the Finance Director cannot be authorized by you to disburse non-school county funds on deposit in your treasurer's account. While the statutes relating to the custody and disbursement of non-school county funds have not been the subject of interpretation either by the courts or by this Office to the extent that the school fund statutes have, they too make clear that the county treasurer is to receive, maintain and disburse all county funds. [Section 12-45-260, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, requires him to report on the first day of each month to the county supervisor (the county administrator in Aiken County) 'the amount of funds collected for and on account of the county and the character of such funds.' [Section 12-45-270, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, requires him to make a monthly report to the State Comptroller General 'exhibiting the total collection made during the fiscal year, the amount disbursed and cash on hand for, or on account of, any levy or tax collected by him.' [Section](#)

12-45-220, CODE OF LAWS OF SOUTH CAROLINA, 1976, empowers the county treasurer to invest or reinvest 'any sum of money not necessary for current expenses' in specified securities or investments. Section 12-45-290, CODE OF LAWS OF SOUTH CAROLINA, 1976, requires the county treasurer to make an annual report to the presiding judge of the court of general sessions of 'the number, character and amount of claims paid by him on orders of the governing body of the county¹ and of the county board of education and to whom paid.' See also, §§ 12-45-300 et seq., CODE OF LAWS OF SOUTH CAROLINA, 1976. All of these statutes indicate that the county treasurer has, if not the express, then the necessarily implied, authority to receive, keep and disburse county funds.

As a general rule, a county . . . treasurer is the proper officer to receive, and disburse the funds or moneys of the county arising from ordinary sources of revenue . . .

So also he is the proper custodian of county funds, . . . 20 C.J.S. Counties § 136a at 947 (1940).

Again, in the absence of any legislation authorizing him to delegate any or all of those duties to another public official, he cannot validly do so. See generally, Bank of Johnston, et al. v. Prince, County Treasurer, 136 S.C. 439, 134 S.E. 387 (1926).

You also ask whether or not you should take immediate action revoking the authorization contained in your July 1, 1977, letter. I think that you should notify the Farmers and Merchants Bank immediately that it is not to honor drafts written either by the Superintendent or by the Finance Director against your treasurer's account.

2. In my opinion, the Aiken County School District is not entitled to have disbursed to it all of the school funds as they are collected and received but, instead, is supposed to draw upon those funds as the need arises. The statutes which I have already cited require the county treasurer to disburse school funds only upon warrants which must meet certain specifications [§ 59-69-220, CODE OF LAWS OF SOUTH CAROLINA, 1976], to keep a cash book of school funds, including therein the amount of each warrant paid by him during the fiscal year [§ 12-45-200, CODE OF LAWS OF SOUTH CAROLINA, 1976], to make a monthly report to the county superintendent of education (the School District Superintendent in Aiken County) of the amounts of collection and disbursements made by him, as well as the balance remaining in his hands to the credit of each school district [§ 12-45-280, CODE OF LAWS OF SOUTH CAROLINA, 1976], and, perhaps most significantly, to 'carry forward all sums . . . for school purposes and unexpended to the next fiscal year and credit the same to the school districts respectively, for which they are apportioned.' § 59-69-250, CODE OF LAWS OF SOUTH CAROLINA, 1976 [emphasis added]. These statutes intend that school funds are to be expended only as needed and are not to constitute a source of investment revenue for the schools. Cf., 1971-72 Ops.Atty.Gen. No. 3396. Moreover, I think that not only is the School District not authorized to withdraw school funds from the treasurer's account for investment purposes but also you are not empowered to invest those funds even pursuant to Section 12-45-220, CODE OF LAWS OF SOUTH CAROLINA, 1976, because you are required to carry forward to the next fiscal year school funds unexpended at the end of each fiscal year and credit them to the School District pursuant to Section 59-69-250 of the Code.

*3 3. In response to your inquiries concerning whether or not you should receive all county funds and disburse them pursuant to warrant only, I think that the statutes discussed in paragraph No. 1 hereinabove manifest that you are to receive and keep all county funds [§§ 12-45-200, 12-45-220, 12-45-260 and 12-45-270, CODE OF LAWS OF SOUTH CAROLINA, 1976] and that you are to disburse them pursuant to warrant only. §§ 12-45-200 and 12-45-290, CODE OF LAWS OF SOUTH CAROLINA, 1976. I know of no reason why federal revenue-sharing funds and federal Comprehensive Employee Training Assistance (CETA) funds should be treated in a different manner from other county funds. Revenue-sharing funds, once received by a county, are considered as general county funds and are subject to the same State and county-imposed restrictions as general county funds. Unless the federal authorities have specified that these two types of funds are to be received, maintained or disbursed in a certain way (and you will need to contact them to ascertain that), in my opinion, they should be received, maintained and disbursed by you in the same way that all

county funds are. Of possible significance is [Section 11-1-10, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, which makes it a criminal offense for any officer, employee or agent or the State to collect monies due the county without turning in that collection to the county treasurer.

4. Neither the Aiken County Council nor any official, including the Finance Director, appointed by it has the authority to alter, expand or diminish your statutory duties except as specific legislation may so sanction it. The provisions of Act No. 283 of 1975, the 'home rule' legislation, do empower county councils to affect the functioning of elected officials in the areas of personnel policies and procedures, including 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 [[§ 4-9-140, CODE OF LAWS OF SOUTH CAROLINA](#), 1976]. These powers are broad, general ones and embrace elected officials and their offices as well as appointed officials. In my opinion, however, they do not authorize any usurpation of your statutory duties to receive, maintain and disburse county funds. Aiken County Ordinance No. 75-6-28, which created the position of Coordinator of County Finances, cannot be used as authority to infringe upon those duties and, to the extent that it does, it is in conflict with State law and, therefore, invalid. Whether or not a specific power or function constitutes an infringement upon your statutory duties would, of course, require an individual examination and determination and, therefore, is beyond the scope of this opinion. As an example, however, the Coordinator is empowered by ordinance to plan, propose and implement programs, including centralized purchasing, accounting and auditing programs, for Aiken County. Aiken County Ordinance No. 75-6-28, § 2(1). That official is not thereby authorized to plan, propose or implement an accounting system which would abolish the cash book which you are required to keep pursuant to [Section 12-45-200, CODE OF LAWS OF SOUTH CAROLINA](#), 1976. Likewise, I think that, while the County Council is empowered to provide for an accounting and reporting system, it is not thereby authorized to modify any accounting and bookkeeping procedures prescribed by statute and, most especially, not for the purpose of eliminating your statutory duties. In this regard, the recommendation under 'Treasurer' (contained in the management letter which you enclosed with your request) that the Finance Director, with your approval, be given the responsibility of preparing the reports which, by statute, you are to submit to the State Comptroller General would require you to delegate your duties, which, as discussed earlier, you are not authorized to do.

*4 The foregoing opinion, however, is subject to one uncertainty, to wit: whether or not the hereinbelow emphasized language of Act No. 283 of 1975, the 'home rule' legislation, has effected an implied repeal of at least some of your statutory duties:

(8) [the county governing body is empowered] to provide for an accounting and reporting system whereby funds are received, safely kept, allocated and disbursed; . . . [§ 4-9-30\(8\), CODE OF LAWS OF SOUTH CAROLINA](#), 1976. [Emphasis added.]

A judicial determination of the effect of this language upon your duties pursuant to the Uniform Declaratory Judgments Act [[§§ 15-53-10 et seq., CODE OF LAWS OF SOUTH CAROLINA](#), 1976] is the only definitive means by which the uncertainty can be resolved. My opinion is that the 'home rule' provisions have not impliedly repealed your statutory duties to receive, maintain and disburse county funds both because the intent of the drafters of that legislation was not to eliminate the functions of all elected county officials other than county council members and because your statutory duties have been carried forward in the 1976 Code of Laws. Moreover, I believe that your powers and the Council's powers are not necessarily irreconcilable and can be harmonized as follows: the Council is to provide for an accounting and reporting system but it may not alter your statutory duties in doing so.

Finally, you have inquired if the Council must furnish you with the personnel and equipment necessary to carry out your functions properly. I think that, 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](#). See also, § 4-1-80, [CODE OF LAWS OF SOUTH CAROLINA](#), 1976, requiring the county governing body to furnish office space, furniture and equipment to specified county officials, including the county treasurer.

With kind regards,

Karen LeCraft Henderson
Senior Assistant Attorney General

Footnotes

- 1 I think that the Aiken County Administrator is also empowered to submit warrants to you for payment pursuant to [Section 4-9-630\(5\), CODE OF LAWS OF SOUTH CAROLINA](#), 1976.

1978 WL 34835 (S.C.A.G.)