



ALAN WILSON
ATTORNEY GENERAL

June 30, 2021

Richard B. Ness, Esq.
Ness & Jett, LLC
P.O. Box 909
Bamberg, South Carolina 29003

Dear Mr. Ness:

We understand you are the Bamberg County Attorney and wish to request an expedited Attorney General's opinion on behalf of Bamberg County (the "County") concerning the adoption of the County's 2021-2022 budget. In your letter, you informed us that the County Council recently had its second reading on the budget and you are "concerned that the budget may not pass on the third reading on June 30, as required by the Constitution and by South Carolina Code Section 4-9-140, and that time is of the essence." Accordingly, you request an opinion "explaining to Bamberg County Council the ramifications of, and any personal liability of council for, failure to timely approve a budget before the July 1 fiscal year start."

Law/Analysis

We understand time is of the essence, so we will provide an abbreviated analysis in responding to your inquiry. We agree with your understanding that South Carolina law requires counties to adopt a budget for the fiscal year prior to the start of the fiscal year, which is July 1. As you mentioned in your request, section 7(b) of article X of the South Carolina Constitution (2009) provides: "Each political subdivision of the State as defined in Section 14 of this article and each school district of this State shall prepare and maintain annual budgets which provide for sufficient income to meet its estimated expenses for each year." Furthermore, section 4-9-140 of the South Carolina Code (2021) requires:

The fiscal year of the county government shall begin on the first day of July of each year and shall end on the thirtieth day of June next following, and the fiscal year shall constitute the budget year of the county government. All county offices, departments, boards, commissions or institutions receiving county funds shall make a full, detailed annual fiscal report to the county council at the end of the fiscal year.

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 requirements of the budgets adopted. Council shall further provide for the levy and collection of taxes necessary to meet all budget requirements except as provided for by other revenue sources.

....

(emphasis added).

Section 7(b) of article X requires the County to prepare and maintain an annual budget. Furthermore, section 4-9-140 clearly mandates the budget be adopted prior to the start of the fiscal year, which is July 1. Johnston v. S.C. Dep't of Lab., Licensing, & Regul., S.C. Real Est. Appraisers Bd., 365 S.C. 293, 296–97, 617 S.E.2d 363, 364 (2005) (“The term ‘shall’ in a statute means that the action is mandatory.”). As our Supreme Court stated in Business License Opposition Committee v. Sumter County, 304 S.C. 232, 234, 403 S.E.2d 638, 639 (1991), “these provisions clearly require the adoption of a budget based upon existing or concurrently levied tax revenue.” Additionally, in prior opinions, this Office consistently treated the requirement to adopt a budget as mandatory. See Op. Att’y Gen., 1991 WL 474751 (S.C.A.G. Apr. 1, 1991) (“Section 4-9-140 codifies the constitutional requirement that annual budgets be adopted.”); Op. Att’y Gen., 1988 WL 383510 (S.C.A.G. Mar. 23, 1988) (“There is little doubt, however, that each of the state’s taxing entities must adopt annual budgets and fund the same from a tax levy or other revenues.”). As such, the South Carolina Constitution and the general law of the state require the County to prepare and adopt a budget for the upcoming fiscal year prior to July 1.

You also inquire as to the consequences of not passing a budget by the deadline set in section 4-9-140. One potential consequence is that not having a budget may hinder the County’s ability to spend county funds. In an opinion issued in 2005, this Office explained as follows:

Pursuant to S.C. Code Ann. § 4-9-140 (1986), a “(c)ounty council shall adopt annually and prior to the beginning of the fiscal year operating and capital budgets for the operation of county government....” As stated in an opinion of this office dated October 14, 1988, “(a)ll appropriations by a county must be reflected in its budget adopted pursuant to Section 4-9-140.” Generally, public agencies are required to spend monies in accordance with appropriations act provisions. See: Op. Atty. Gen. dated February 23, 1982. As determined by opinions of this office dated January 17, 1990 and July 31, 1991, public monies cannot be spent in a manner inconsistent with county provisions restricting the use of public funds.

Op. Att’y Gen., 2005 WL 774140 (S.C.A.G. Mar. 1, 2005). Accordingly, we have serious concerns as to whether the County may expend county funds in upcoming fiscal year without adopting a budget.

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Conclusion

In accordance with our analysis above, state law requires the County to adopt a budget prior to the start of its fiscal year on July 1. If the County fails to adopt a budget, it may be prohibited from expending county funds until it adopts a budget.

Sincerely,



Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General