CHAPTER 9

County Government

ARTICLE 1

General Provisions

**SECTION 4‑9‑10.** Referendum to determine form of county government; adoption of form of government selected; form of government when not otherwise determined by referendum; change in initial form; continuation of officials in office.

 (a) Each county, after at least two public hearings which shall have been advertised in a newspaper of general circulation in the county and wherein the alternate forms of government provided for in this chapter are explained by the legislative delegation of the county, may prior to July 1, 1976, conduct a referendum to determine the wishes of the qualified electors as to the form of government to be selected or become subject to the provisions of subsection (b) of this section. The referendum may be called by an act of the General Assembly, resolution of the governing body, or upon petition of not less than ten percent of the registered electors of the county. The referendum shall be conducted by the county election commission. The question submitted shall be framed by the authority calling for the referendum and when called by petition such petition shall state the question to be proposed. All alternate forms of government provided for in this chapter shall appear on the ballot and unless one form receives a majority favorable vote in the initial referendum, a second or runoff referendum shall be held two weeks after the first referendum at which time the two forms which received the highest number of votes shall again be submitted to the qualified electors for final selection of the form to be adopted. A referendum may also be called to determine the wishes of the registered electors as to the question of whether the members of the governing body of the county shall be elected from defined single member election districts or at large from the county. Such referendum may be called by an act of the General Assembly, resolution of the governing body of the county or by petition of not less than ten percent of the registered electors. The governing body shall by resolution provide for adoption of the form of government selected in the referendum, which shall be filed in the office of the Secretary of State and be effective immediately upon such filing. All resolutions which adopt a form of county government shall be printed in the Code of Laws of South Carolina and remain a part thereof until amended or repealed. The General Assembly shall provide for the number of councilmen or commissioners. In the event that the members of the governing body are required to be elected from defined single member election districts, the General Assembly shall provide for the composition of such districts.

 (b) Notwithstanding any other provisions of this chapter, unless otherwise determined by referendum prior to July 1, 1976, the county concerned shall, beginning on that date, have the form of government including the method of election, number, composition and terms of the governing body most nearly corresponding to the form in effect in the county immediately prior to that date, which the General Assembly hereby determines to be as follows:

 For the counties of Abbeville, Allendale, Barnwell, Calhoun, Dillon, Georgetown, Greenwood, Horry, Laurens, Oconee and Saluda, the council form of government as prescribed in Article 3 of this chapter.

 For the counties of Anderson, Bamberg, McCormick, Union and York, the council‑supervisor form of government as prescribed in Article 5 of this chapter.

 For the counties of Aiken, Beaufort, Charleston, Cherokee, Chester, Chesterfield, Clarendon, Darlington, Dorchester, Edgefield, Fairfield, Florence, Greenville, Hampton, Jasper, Kershaw, Lee, Lancaster, Lexington, Newberry, Pickens, Richland, Spartanburg and Sumter the council‑administrator form of government as prescribed in Article 7 of this chapter.

 For the counties of Berkeley, Colleton, Marion, Orangeburg, Marlboro and Williamsburg, the county board of commissioners form of government as prescribed in Article 11 of this chapter.

 For those counties in which the county governing body, immediately prior to June 25, 1975, was appointed rather than elected, the members of the governing body shall be required to be elected from defined single member election districts, unless otherwise determined by a valid referendum prior to July 1, 1976. For the purpose of this section, such referendum shall be deemed valid unless declared to be in violation of state or federal law by a court of competent jurisdiction.

 (c) After the initial form of government and the number and method of election of county council including the chairman has been adopted and selected, the adopted form, number, and method of election shall not be changed for a period of two years from the date such form becomes effective and then only as a result of a referendum as hereinafter provided for. Referendums may be called by the governing body or upon petition of not less than ten percent of the registered electors of the county. Petitions shall be certified as valid or rejected by the county board of registration within sixty days after they have been delivered to the board and, if certified, shall be filed with the governing body which shall provide for a referendum not more than ninety days thereafter. If more than one petition is filed within the time allowed for such filing, the petition bearing the largest number of signatures of registered electors shall be the proposal presented, in the manner set forth hereinafter. Referendums shall be conducted by the county election commissioner and may be held in a general election or in a special election as determined by the governing body. No change to an alternate form of government, different number of council members, or method of election of council including the chairman as a result of a referendum shall become effective unless such proposed form receives a favorable vote of a majority of those persons voting in a referendum. In any referendum, the question voted upon, whether it be to change the form of government, number of council members, or methods of election, shall give the qualified electors an alternative to retain the existing form of government, number of council members, or method of election or change to one other designated form, number, or method of election. After a referendum has been held and whether or not a change in the form results therefrom, no additional referendums shall be held for a period of four years.

 If the governing body of the county as initially or subsequently established pursuant to a referendum or otherwise shall be declared to be illegal and not in compliance with state and federal law by a court of competent jurisdiction, the General Assembly shall have the right to prescribe the form of government, the method of election, and the number and terms of council members but may submit to the qualified electors by referendum a question as to their wishes with respect to any element thereof which question shall include as an option the method of election in effect at the time of the referendum.

 (d) Notwithstanding any other provision of this section, the council‑manager form of government as provided for in Article 9 of this chapter shall be adopted only after receiving a favorable referendum vote.

 (e) All members of the governing bodies of the respective counties serving terms of office on the date on which a particular form of county government becomes effective shall continue to serve the terms for which they were elected or appointed and until their successors are elected or appointed and have qualified.

HISTORY: 1962 Code Section 14‑3701; 1975 (59) 692; 1980 Act No. 300, Sections 1, 1A, 2; 1982 Act No. 313, Section 3.

CROSS REFERENCES

Charges for legal advertisements in newspapers, see Sections 15‑29‑80 et seq.

Constitutional provisions regarding counties and county government, see Const. Art 7, Section 11; Art 8, Sections 1, 7.

Form and composition of new political subdivisions consolidated under Chapter 8 of Title 4 to be as authorized for counties pursuant to this Chapter, see Section 4‑8‑40.

Right of the people to modify their form of government, see SC Const, Art 1, Section 1.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Hospitals Section 3, Governing Body.

S.C. Jur. Magistrates and Municipal Judges Section 14, Magistrates’ Courts.

S.C. Jur. Public Officers and Public Employees Section 53, County and Municipal Employees.

S.C. Jur. Public Officers and Public Employees Section 57, Home Rule Act.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: State and Local Government: Home Rule and the “One‑Shot” Doctrine. 33 S.C. L. Rev. 148 (August 1981).

United States Supreme Court Annotations

Elections, voting rights preclearance requirements, utility districts, bail out provisions, see Northwest Austin Mun. Utility Dist. No. One v. Holder, U.S.Dist.Col.2009, 129 S.Ct. 2504, 557 U.S. 193, 174 L.Ed.2d 140.

Attorney General’s Opinions

Regardless of whether the council form of government prescribed in Article 2 of Act No. 283 of 1975, the “home rule” legislation, becomes the form of county government for Greenville County by referendum pursuant to Code 1962 Section 14‑3701(a) [Code 1976 Section 4‑9‑10(a)] thereof or by the provisions of Code 1962 Section 14‑3701(b) [Code 1976 Section 4‑9‑10(b)] thereof, there is no provision made under that form of government for the office of county supervisor. 1975‑75 Op Atty Gen, No 4121, p 195.

The three members of the Greenville County Council whose terms do not expire until 1978 will sit as members of the new Greenville County governing body until then; the three holdovers will continue holding office only until the Tuesday following the general election in 1978; the five present Greenville County Council members whose terms expire in 1976 will continue to serve until January 1, 1977; the Council will have eight members until January 1, 1977, when its number will increase to fifteen; a new member should be elected from a single‑member election district in which two holdovers happen to reside; there can be fifteen members of the Greenville County Council until the holdovers’ terms expire in 1978 by virtue of Section 3 [1975 Act No. 283, Section 3]; the term of a resigned member of the County Council will not be continued until 1978. 1975‑76 Op Atty Gen, No 4404, p 247.

Upon successful passage of a referendum to change the form of county government and number of council members, the county council would adopt an ordinance to implement the changes approved by the electorate; such changes would then be submitted to the United States Justice Department for approval under the Voting Rights Act of 1965, prior to their becoming effective. Incumbent council members, not subject to re‑election in the election during which the referendum was held, would continue to serve until their respective terms expire; council members elected in the election during which the referendum was held would serve until the expiration of their respective terms. Any positions authorized by the referendum would be filled by special election. 1988 Op Atty Gen, No. 88‑36, p 114.

Inasmuch as the law does not expressly address the format which the questions on a referendum ballot must take, the better reasoned approach and one which will allow a more thorough expression of the voters’ intent would be to propound each of the various changes in a separate question on the referendum ballot, at the same time insuring that the alternatives mandated by Section 4‑9‑10(c) of the Code are provided. 1987 Op Atty Gen, No. 87‑81, p 213.

A court would probably conclude that Richland County Council does possess certain limited investigative powers pursuant to its authority to levy taxes by setting the millage rate for School District One. 1986 Op Atty Gen, No. 86‑7, p. 32.

The language of the petition requesting that the Richland County Council be reduced in size from 11 to 7 members would require that the reduction be accomplished in 1984. 1983 Op Atty Gen, No. 83‑9, p. 22.

A ballot in a referendum should contain only the question or questions as setout in the petition, or as called for by the Council. 1983 Op Atty Gen, No. 83‑16, p. 32.

In counties having a council‑administrator form of government, the County Council must approve a reorganizational change before it may be implemented. 1982 Op Atty Gen, No 82‑57, p 60.

A specific legal notice must be given for a referendum sixty days prior to the referendum. 1982 Op Atty Gen, No 82‑58, p 61.

The governing body of Aiken County is without authority to alter the discounts provided by Act 202, Acts of 1973, for early payment of property taxes until January 1, 1980. 1979 Op Atty Gen, No 79‑85, p 115.

Assuming that the U.S. Justice Department has approved Clarendon County’s method of election pursuant to Section 5 of the Voting Rights Act of 1965, the members of the County Council are to be elected pursuant to the provisions of Act 1059 of 1972. 1976‑77 Op Atty Gen, No 77‑120, p 103.

County governing bodies become vested with the powers specified in Act No 283 of 1975, the “home rule” legislation, either upon their adoption of one of the forms of government pursuant to Code 1962 Section 14‑3701(a) [Code 1976 Section 4‑9‑10(a)] or on July 1, 1976, pursuant to Code 1962 Section 14‑3701(b) [Code 1976 Section 4‑9‑10(b)]. 1974‑75 Op Atty Gen, No 4043, p 118.

If Oconee County does not conduct a referendum on a form of county government by July 1, 1976, the members of the Oconee County governing body will continue, from that date, to be elected at large from the county. 1974‑75 Op Atty Gen, No 4061, p 140.

Under the Home Rule Act, a municipal governing body may by ordinance adopt one of the alternative provisions set forth in the Act with regard to the number of municipal council members and the duration and staggering of their terms of office. 1974‑75 Op Atty Gen, No 4112, p 190.

The present Pickens County Council member will continue to serve as such until the expiration of their respective terms of office, notwithstanding that county’s selection of the single member election district method of election for members of the governing body pursuant to 1962 Code Section 14‑3701(a) of Act No. 283 of 1975 [1976 Code Section 4‑9‑10], the “home rule” legislation. 1974‑75 Op Atty Gen, No 4147, p 216.

The fact that Members of the Boards of Commissioners in some counties were appointed before the “home rule” legislation does not mean that commissioners will necessarily be appointed if that form of government becomes effective later. 1974‑75 Op Atty Gen, No 4163, p 226.

In order for one of the three forms of municipal government provided for in Act No. 283 of 1975 [Chapter 9 of Title 4 and Chapters 1, 5, 7, 9, 11, 13, 15 and 17 of Title 5 of the 1976 Code], the “home rule” legislation, to be selected pursuant to Article I of the Act [Article 1 of Chapter 9 of Title 4 of the 1976 Code], one form need receive only a plurality of the votes cast. 1974‑75 Op Atty Gen, No 4211, p 256.

There is no statutory requirement that resolution be filed with Secretary of State to effectuate new form of county government. However, county would not be prohibited from filing copy of ordinance with Secretary of State. 1993 Op Atty Gen No. 93‑64.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

Voting Rights Act 3

1. In general

ARTICLE 8 Section 14 precludes legislature from delegating to counties responsibility for enacting legislation relating to subjects encompassed by that section, and from creating exceptions to general constitutional and statutory requirements for individual counties, but does not limit power of legislature to create alternate means, by general law, for counties to exercise constitutional powers; taxpayer argument that legislature had only one chance to enact legislation pursuant to ARTICLE 8 Section 7 of Constitution, and that once Home Rule Act was enacted legislature lost authority to enact any further legislation dealing with bonded indebtedness of counties or structure in administration of any governmental services, was rejected. Robinson v. Richland County Council (S.C. 1987) 293 S.C. 27, 358 S.E.2d 392.

The Home Rule Act (Sections 4‑9‑10 et seq.), while preventing the General Assembly from enacting “special legislation” and voiding any “special legislation” which contradicts the general law, does not operate retroactively to abolish all “special legislation” which was in effect in South Carolina prior to the enactment of the Home Rule Act. Graham v. Creel (S.C. 1986) 289 S.C. 165, 345 S.E.2d 717. Municipal Corporations 65

In light of the complete repugnancy between Sections 4‑19‑10(b) and 4‑19‑20, under the terms of which power to establish fire protection systems and to approve designated boundaries, specified services and tax levels resided solely in the county governing body, and the Home Rule Act, Sections 4‑9‑10 et seq., under which the creation of any special tax district became a matter of free‑holder initiative, the Home Rule Act repealed by implication the grant of power to county governing bodies contained in the other sections. City of Myrtle Beach v. Richardson (S.C. 1984) 280 S.C. 167, 311 S.E.2d 922.

Election of County Supervisor subsequent to adoption by county, in referendum, of Counsel‑Administrator form of government is nullity. Greenville County Council v. Ashmore (S.C. 1980) 274 S.C. 466, 265 S.E.2d 38.

Timeliness of petitions. A county council was not required to call and hold an election to determine the form of local government to be used in the county where the petitions calling for a popular election were not filed in sufficient time to provide reasonable notice to the electorate and to hold public hearings, as contemplated by statute. McCain v. Edwards (S.C. 1979) 272 S.C. 539, 252 S.E.2d 924. Municipal Corporations 12(8)

Referendum deadline of July 1, 1976, prescribed in Home Rule Act, Code 1962 Section 14‑3701(a) [Code 1976 Section 4‑9‑10(a)] may not be extended by bringing suit for court approval of new election date. Infinger v. Edwards (S.C. 1977) 268 S.C. 375, 234 S.E.2d 214.

The right to select a form of local government is purely statutory, and courts may not interfere with the clear mandate of the Home Rule Act. Infinger v. Edwards (S.C. 1977) 268 S.C. 375, 234 S.E.2d 214. Counties 21

Former district residency requirements for candidates for the Charleston County council remained in effect, despite challenge that they were contrary to the provisions of the Home Rule Act, due to Charleston County’s failure to hold a timely referendum. Infinger v. Edwards (S.C. 1977) 268 S.C. 375, 234 S.E.2d 214.

2. Constitutional issues

Act 499 is not unconstitutional on grounds it allows residents of one county to be treated differently than residents of other counties, despite argument that Home Rule Act was intended to make county government uniform throughout State. Robinson v. Richland County Council (S.C. 1987) 293 S.C. 27, 358 S.E.2d 392.

Court recognizes exception to outright prohibition against laws for specific county as stated in Article VIII Section 7 by reading Sections 1, 7, and 17 of Article VIII together and reasoning that specific legislation necessary to bring about orderly transition to home rule is constitutionally permissible because legislation’s authority is temporary in nature and extends only to point necessary to place Article VIII fully into operation; language “or subsequently” in Section 4‑9‑10 merely recognizes possibility, as typified by Horry County’s experience, that more than one attempt might be necessary to complete transition to home rule and refers not to county governments established subsequent to initial one but rather to attempts to set up initial government and statute is therefore constitutional. Horry County v. Cooke (S.C. 1980) 275 S.C. 19, 267 S.E.2d 82.

General law permits general assembly to act to very limited extent by special law in establishment of each initial county government, but it does not allow general assembly to repeatedly inject its will into operation of county government, and constitutional prohibition against special legislation prohibits general assembly from enacting successive special legislation in attempt to secure sanction of United States Department of Justice for form of county government. Van Fore v. Cooke (S.C. 1979) 273 S.C. 136, 255 S.E.2d 339. Counties 24

Fact that referendum ballot for selection of form of home rule county government contained as a selection a form of government repugnant to South Carolina Constitution Article VIII Section 7 did not invalidate the entire ballot. Duncan v. York County (S.C. 1976) 267 S.C. 327, 228 S.E.2d 92.

The right to a referendum being statutory (Code 1962 Section 14‑3701 [Code 1976 Section 4‑9‑10]), nothing in the constitution demands a referendum for the selection of one of the forms of county government. Duncan v. York County (S.C. 1976) 267 S.C. 327, 228 S.E.2d 92. Counties 21

Code 1962 Section 14‑3701 [Code 1976 Section 4‑9‑10], in providing that if no referendum is held, each county “shall [beginning July 1, 1976] have the form of government . . .most nearly corresponding to the form in effect in the county immediately prior to that date . . .” is not unconstitutional for permitting unauthorized forms of county government to exist. Duncan v. York County (S.C. 1976) 267 S.C. 327, 228 S.E.2d 92.

Citizens of county which had participated in referendum for selection of form of county home rule government had no standing to challenge the constitutionality of Code 1962 Section 14‑3701 [Code 1976 Section 4‑9‑10]. Duncan v. York County (S.C. 1976) 267 S.C. 327, 228 S.E.2d 92.

Code 1962 Sections 14‑3701 et seq. [Code 1976 Sections 4‑9‑10 et seq.], dealing with both county and municipal government, does not violate South Carolina Constitution Article III Section 17 in that it deals with more than one subject. Duncan v. York County (S.C. 1976) 267 S.C. 327, 228 S.E.2d 92.

3. Voting Rights Act

An at‑large method of electing the Sumter County Counsel would be subject to preclearance by the Attorney General of the United States, under Section 5 of the Voting Rights Act of 1965, and preclearance was not already established by the Attorney General’s failure to object to two statutes which established the at‑large procedure or by his failure to object to the Home Rule Act of 1975 which also related to at‑large elections for the Sumter County governing body. County Council of Sumter County, S.C. v. U.S., 1983, 555 F.Supp. 694.

Statute establishing voting qualifications, prerequisites to voting, or standards, practices or procedures with respect to voting, different from those in force or effect in county on November 1, 1964 with respect to election of members of the county council and its separately elected chairman was subject to the pre‑clearance requirements of Section 5 of the Voting Rights Act of 1965, as amended, 42 USCA Section 1973c. Horry County v. U. S., 1978, 449 F.Supp. 990. Counties 38

**SECTION 4‑9‑20.** Designation of permissible alternative forms of government.

 The alternate forms of government which may be adopted pursuant to Section 4‑9‑10 shall be one of the following:

 (a) Council form as set forth in Article 3;

 (b) Council‑supervisor form as set forth in Article 5;

 (c) Council‑administrator form as set forth in Article 7;

 (d) Council‑manager form as set forth in Article 9;

 (e) Board of commissioners form as set forth in Article 11.

HISTORY: 1962 Code Section 14‑3702; 1975 (59) 692.

CROSS REFERENCES

Constitutional provision authorizing establishment of up to five alternate forms of government, see SC Const, Art 8, Section 7.

Form and composition of new political subdivisions consolidated under Chapter 8 of Title 4 to be as authorized for counties pursuant to this Chapter, see Section 4‑8‑40.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: State and Local Government: Home Rule and the “One‑Shot” Doctrine. 33 S.C. L. Rev. 148, August 1981.

Attorney General’s Opinions

A supervisor in a council‑supervisor form of government under is an elected official based on Section 4‑9‑410 both generally speaking and for purposes of Section 4‑9‑30(7). S.C. Op.Atty.Gen. (April 2, 2013) 2013 WL 1695510.

NOTES OF DECISIONS

In general 1

1. In general

Consistent with South Carolina Constitution Article VIII Section 7 and pursuant to Code 1962 Section 14‑3703 [Code 1976 Section 4‑9‑30] each county under forms 1‑4 of county government (Code 1962 Section 14‑3702 [Code 1976 Section 4‑9‑20]) may conduct its own governmental affairs without the necessity of periodic General Assembly intervention much as municipalities have heretofore operated. Duncan v. York County (S.C. 1976) 267 S.C. 327, 228 S.E.2d 92.

**SECTION 4‑9‑25.** Powers of counties.

 All counties of the State, in addition to the powers conferred to their specific form of government, have authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of these powers in relation to health and order in counties or respecting any subject as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order, and good government in them. The powers of a county must be liberally construed in favor of the county and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties.

HISTORY: 1989 Act No. 139, Section 3, eff June 6, 1989.

United States Supreme Court Annotations

Free speech, sign ordinance imposing differing restrictions on temporary directional signs to religious events was content‑based regulation of speech that did not survive strict scrutiny, see Reed v. Town of Gilbert, Ariz., 2015, 135 S.Ct. 2218, 192 L.Ed.2d 236. Constitutional Law 1664; Zoning and Planning 1111

Zoning and planning, denial of application to build cell phone tower requires written reasons issued essentially contemporaneously with denial, see T‑Mobile South, LLC v. City of Roswell, Ga., 2015, 135 S.Ct. 808, 190 L.Ed.2d 679. Zoning and Planning 1429

Attorney General’s Opinions

Discussion of the prohibition on using public funds on private property as it relates to the Richland County Code of Ordinances, Chapter 21, “Roads, Highways and Bridges”. S.C. Op.Atty.Gen. (September 23, 2016) 2016 WL 5820152.

Discussion of the ownership of the Georgetown County Rice Museum/Town Clock. S.C. Op.Atty.Gen. (September 23, 2014) 2014 WL 4953184.

Counties are not authorized to enact local legislation to establish additional requirements on landowners seeking to have timberland classified and assessed as agricultural property. S.C. Op.Atty.Gen. (September 22, 2014) 2014 WL 4953188.

The constitutionality of local ordinances as they relate to the application of Home Rule provisions of the Constitution and legislative enactments is presumed. S.C. Op.Atty.Gen. (February 22, 2013) 2013 WL 861300.

County ordinances generally are not enforceable within municipalities unless the county and the municipality enter into an agreement. S.C. Op.Atty.Gen. (August 10, 2011) 2011 WL 3918176.

While there is a presumption that an ordinance is constitutional, the proposed county council ordinance, requiring elected officials residing in that county, including the county legislative delegation, to submit to a drug screen as a condition for holding office, may be constitutionally suspect. S.C. Op.Atty.Gen. (Nov. 7, 2011) 2011 WL 6120332.

Where Berkeley County has passed an ordinance allowing Sunday liquor sales and the Town of St. Stephen is a town located in Berkeley County, a business within the Town of St. Stephen cannot obtain a liquor license for Sunday sales unless the Town of St. Stephen and Berkeley County first agree that the Town of St. Stephen consents to the ordinance. S.C. Op.Atty.Gen. (Feb 8, 2011) 2011 WL 782322.

County is without authority to adopt ordinance that could either totally ban sale and use of fireworks in unincorporated areas of county or regulate areas where fireworks could be sold and used and times of such use. Adoption of such ordinance would further regulate possession, sale or use of fireworks and would thus be invalid. 1990 Op Atty Gen No. 90‑53.

NOTES OF DECISIONS

In general 1

Construction 2

Employment contracts 4

Waste management 3

1. In general

When a landowner has been called upon to sacrifice all economically beneficial use of his property in the name of the common good, even though the action may have been a valid use of the police power, he has suffered a taking under the Fifth Amendment of the U.S. Constitution. Lucas v. South Carolina Coastal Council (U.S.S.C. 1992) 112 S.Ct. 2886, 505 U.S. 1003, 120 L.Ed.2d 798, on remand 309 S.C. 424, 424 S.E.2d 484. Eminent Domain 2.10(1)

In order for the state to prohibit all economically beneficial use of land without paying compensation, the regulation must do no more than duplicate the result an individual could achieve in court under state private nuisance law or by the state under its complimentary power to abate nuisances which affect the public. Lucas v. South Carolina Coastal Council (U.S.S.C. 1992) 112 S.Ct. 2886, 505 U.S. 1003, 120 L.Ed.2d 798, on remand 309 S.C. 424, 424 S.E.2d 484. Eminent Domain 69

County had power and authority to pass a resolution and enact an ordinance promoting the general welfare of county’s residents by building and maintaining a public marine terminal on river. South Carolina State Ports Authority v. Jasper County (S.C. 2006) 368 S.C. 388, 629 S.E.2d 624, rehearing denied. Counties 22

Comprehensive Planning Act, which governed zoning, did not evince legislative intent to completely prohibit any other local enactments from touching upon zoning or land use, and thus, the Act did not preempt a county ordinance regulating the location of sexually oriented businesses, enacted pursuant to county’s statutory police powers. Greenville County v. Kenwood Enterprises, Inc. (S.C. 2003) 353 S.C. 157, 577 S.E.2d 428. Zoning And Planning 1033

County ordinance which granted an ad valorem property tax exemption solely to owner‑occupied primary residences conflicted with and, thus, violated the enabling legislation because it effectively created an additional exception not intended by the legislation; despite contention that county had discretion to enact ordinance in manner it did due to principles of home rule, the only real discretion conferred upon the county was whether to adopt the ordinance, which, once adopted, was required to be consistent with the general law. Code 1976, Sections Sections 4‑9‑25, Riverwoods, LLC v. County of Charleston (S.C. 2002) 349 S.C. 378, 563 S.E.2d 651. Counties 190.2

County had power to enact ordinance addressing public nudity, pursuant to statutory authority to enact ordinances to preserve “health, peace, order, and good government.” Diamonds v. Greenville County (S.C. 1997) 325 S.C. 154, 480 S.E.2d 718. Counties 21.5

The plain language of Section 4‑9‑25 authorized the enactment of an ordinance by the County of Charleston that improves the general welfare of the county by enhancing services and facilities used by tourists, whose presence is essential to the county’s economy. Hospitality Ass’n of South Carolina, Inc. v. County of Charleston (S.C. 1995) 320 S.C. 219, 464 S.E.2d 113. Innkeepers 4

2. Construction

Counties’ powers respecting any subject as appears to them necessary and proper for the general welfare must be liberally construed. Georgia Dept. of Transp. v. Jasper County (S.C. 2003) 355 S.C. 631, 586 S.E.2d 853. Counties 21.5

3. Waste management

Ordinance regulating flow of solid waste within county was valid exercise of county’s police powers, where subject matter of ordinance, solid waste, was one in which counties’ have had a longstanding involvement. Sandlands C & D, LLC v. County of Horry (S.C. 2011) 394 S.C. 451, 716 S.E.2d 280. Environmental Law 346(2)

4. Employment contracts

Employment contract that county administrator entered into with lame‑duck county council, following an election in which three of the council’s members were defeated but before new members assumed office, was void in its entirety, including its severance and sick pay provisions, under the law of municipalities, even though the Home Rule Act allowed counties to employ an administrator for a definite term; the Act did not clearly authorize a definite term to extend beyond the terms of outgoing council members, the contract deprived the new council of a discretion that public policy required to be unimpaired, and the powers of the county had to be liberally construed. Cunningham v. Anderson County (S.C.App. 2013) 402 S.C. 434, 741 S.E.2d 545, rehearing denied, affirmed in part, reversed in part 414 S.C. 298, 778 S.E.2d 884. Counties 65; Counties 74(1); Public Employment 141; Public Employment 363; Public Employment 373

**SECTION 4‑9‑30.** Designation of powers under each alternative form of government except board of commissioners form.

 Under each of the alternate forms of government listed in Section 4‑9‑20, except the board of commissioners form provided for in Article 11, each county government within the authority granted by the Constitution and subject to the general law of this State shall have the following enumerated powers which shall be exercised by the respective governing bodies thereof:

 (1) to adopt, use and revise a corporate seal;

 (2) to acquire real property by purchase or gift; to lease, sell or otherwise dispose of real and personal property; and to acquire tangible personal property and supplies;

 (3) to make and execute contracts;

 (4) to exercise powers of eminent domain for county purposes except where the land concerned is devoted to a public use; provided, however, the property of corporations not for profit organized under the provisions of Chapter 35 of Title 33 shall not be subject to condemnation unless the county in which their service area is located intends to make comparable water service available in such service area and such condemnation is for that purpose. After any such condemnation, the county shall assume all obligations of the corporation related to the property and the facilities thereon which were condemned;

 (5)(a) to assess property and levy ad valorem property taxes and uniform service charges, including the power to tax different areas at different rates related to the nature and level of governmental services provided and make appropriations for functions and operations of the county, including, but not limited to, appropriations for general public works, including roads, drainage, street lighting, and other public works; water treatment and distribution; sewage collection and treatment; courts and criminal justice administration; correctional institutions; public health; social services; transportation; planning; economic development; recreation; public safety, including police and fire protection, disaster preparedness, regulatory code enforcement; hospital and medical care; sanitation, including solid waste collection and disposal; elections; libraries; and to provide for the regulation and enforcement of the above. However, prior to the creation of a special tax district for the purposes enumerated in this item, one of the following procedures is required:

 (i) When fifteen percent of the electors in a proposed special tax district sign and present to the county council a petition requesting the creation of a special tax district, an election must be held in which a majority of the electors in that area voting in the election shall approve the creation of the special tax district, the nature of the services to be rendered and the maximum level of taxes or user service charges, or both, authorized to be levied and collected. The petition must contain a description of the proposed special tax district, the elector’s signature and address. If the county council finds that the petition has been signed by fifteen percent or more of the electors resident within the area of the proposed special tax district, it may certify that fact to the county election commission. Upon receipt of a written resolution certifying that the petition meets the requirements of this section, the county election commission shall order an election to be held within the area of the proposed special tax district. The election ordered pursuant to this section is a special election and must be held, regulated, and conducted with the provisions prescribed by Chapters 13 and 17 of Title 7, except as otherwise provided in this section. The county election commission shall give at least thirty days’ notice in a newspaper of general circulation within the proposed special tax district. The county election commission shall certify the result of the election to the county council and county council by written resolution shall publish the result of the election.

 (ii) When a petition is submitted to the county council signed by seventy‑five percent or more of the resident freeholders who own at least seventy‑five percent of the assessed valuation of real property in the proposed special tax district, the county council upon certification of the petition may pass an ordinance establishing the special tax district. For the purposes of this item, “freeholder” has the same meaning as defined in Section 5‑3‑240. The petition must contain a designation of the boundaries of the proposed special tax district, the nature of the services to be rendered, and the maximum level of the taxes or user service charges, or both, authorized to be levied and collected.

 (iii) When the area of the proposed special tax district consists of the entire unincorporated area of the county, county council may pass an ordinance establishing a special tax district. For the purposes of this item “unincorporated area” means the area not included within the corporate boundaries of a municipal corporation created pursuant to Chapter 1 of Title 5 or within a special purpose district created before March 7, 1973, to which has been committed the governmental service which the county council intends to provide through the proposed special taxing district unless the special purpose district has been dormant for five years or more. If, however, the same service intended to be rendered by the special taxing district is being rendered or is intended to be rendered within any portion of the territory of the special purpose district, then no such service may be rendered by the special taxing district without consent of the governing body of the special purpose district.

 (b) In the ordinance establishing the special tax district, county council shall provide for the operation of the special tax district. The special tax district may be operated as an administrative division of the county, or county council may appoint a commission consisting of three to five members and provide for their terms of office.

 (c) Notwithstanding any provision to the contrary, the county council shall not finance any service not being rendered by the county on March 7, 1973, by a countywide tax where the service is being provided by any municipality within that municipality or where the service has been budgeted or funds have been applied for as certified by the municipal governing body, except upon concurrence of the municipal governing body. For purposes of this subitem, “municipality” means a municipal corporation created pursuant to Chapter 1 of Title 5.

 (d) Before the issuance of any general obligation bonds to provide a service in a special tax district and the levy of a tax to retire the bonds at rates different from those levied in the remainder of the county related to the nature and level of government services to be provided in the special tax district, the county council shall first approve the issuance of the general obligation bonds and the levy of the tax to retire the bonds by ordinance.

 (e) County council may by ordinance diminish boundaries of or abolish a special tax district. It must first conduct a public hearing. Notice of the hearing must be given two weeks before it in a newspaper of general circulation in the tax district.

 (f) After a special tax district is created, pursuant to the provisions of this item, the governing body of the county may, by ordinance, provide that the uniform service charge be collected on an annual, semiannual, quarterly, or monthly basis. The governing body by ordinance also may provide for monthly delinquency penalty charges by special tax notices.

 (g) Any special taxing district created prior to the effective date of this act pursuant to this subsection, the creation of which would have been valid but for any inconsistency in or constitutional infirmity of this subsection as codified at the time of such creation, is hereby created and declared to be valid, and its existence is confirmed as of the date of its prior creation; provided, however, that any such special taxing district shall be subject to all provisions of this subsection as provided for in this act, including without limitation item (e).

 (h) The creation of a street lighting system within a county may not disrupt the assignment of electric service rights by the Public Service Commission. The special tax district may not treat the street lighting system as one premises for the purchase of electric energy. Those lighting structures located in an area assigned by the South Carolina Public Service Commission to an electric supplier pursuant to Section 58‑27‑640, et seq., must be served by the designated electric supplier unless it consents to service by another supplier. Those light structures located in an unassigned area must be considered a single premises and may be served by an electric supplier pursuant to the customer choice provisions of Section 58‑27‑620 or by an electrical utility pursuant to the certificate of public convenience and necessity provisions of Section 58‑27‑1230 to serve the lighting structures planned for the unassigned areas.

 After a special tax district is created pursuant to this item, the governing body of the county by ordinance may provide that the uniform service charge be collected on an annual, semiannual, quarterly, or monthly basis.

 (6) 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, except as otherwise provided for in this title. Any county governing body may by ordinance abolish a rural or other county police system established pursuant to Chapter 6 of Title 53 [of the Code of Laws, 1962] and devolve the powers and duties of the system upon the county sheriff; provided, however, that such an ordinance shall not become effective until the registered electors of the county shall first approve the ordinance by referendum called by the governing body;

 (7) to develop personnel system policies and procedures for county employees by which all county employees are regulated except those elected directly by the people, and to be responsible for the employment and discharge of county personnel in those county departments in which the employment authority is vested in the county government. This employment and discharge authority does not extend to any personnel employed in departments or agencies under the direction of an elected official or an official appointed by an authority outside county government. Any employee discharged shall follow the grievance procedures as established by county council in those counties where the grievance procedures are operative, retaining all appellate rights provided for in the procedures. In those counties where a grievance procedure is not established, a county employee discharged by the chief administrative officer or designated department head must be granted a public hearing before the entire county council if he submits a request in writing to the clerk of the county council within five days of receipt of notice of discharge. The hearing must be held within fifteen days of receipt of the request. The employee must be relieved of his duties pending the hearing and if a majority of the county council sustains the discharge, it is final subject to judicial review, but if a majority of the county council reverses the dismissal, the employee must be reinstated and paid a salary for the time he was suspended from his employment.

 The salary of those officials elected by the people may be increased but may not be reduced during the terms for which they are elected, except that salaries for members of council and supervisors under the council‑supervisor form of government must be set as provided in this chapter;

 (8) to provide for an accounting and reporting system whereby funds are received, safely kept, allocated and disbursed;

 (9) to provide for land use and promulgate regulations pursuant thereto subject to the provisions of Chapter 7 of Title 6;

 (10) to establish and implement policies and procedures for the issuance of revenue and general obligation bonds subject to the bonded debt limitation;

 (11) to grant franchises and make charges in areas outside the corporate limits of municipalities within the county in the manner provided by law for municipalities and subject to the same limitations, to provide for the orderly control of services and utilities affected with the public interest; provided, however, that the provisions of this subsection shall not apply to persons or businesses acting in the capacity of telephone, telegraph, gas and electric utilities, or suppliers, nor shall it apply to utilities owned and operated by a municipality; provided, further, that the provisions of this subsection shall apply to the authority to grant franchises and contracts for the use of public beaches;

 (12) to levy uniform license taxes upon persons and businesses engaged in or intending to engage in a business, occupation, or profession, in whole or in part, within the county but outside the corporate limits of a municipality except those persons who are engaged in the profession of teaching or who are ministers of the gospel and rabbis, except persons and businesses acting in the capacity of telephone, telegraph, gas and electric utilities, suppliers, or other utility regulated by the Public Service Commission and except an entity which is exempt from license tax under another law or a subsidiary or affiliate of any such exempt entity. No county license fee or tax may be levied on insurance companies. The license tax must be graduated according to the gross income of the person or business taxed. A business engaged in making loans secured by real estate is subject to the license tax only if it has premises located in the county but outside the corporate limits of a municipality. If the person or business taxed pays a license tax to another county or to a municipality, the gross income for the purpose of computing the tax must be reduced by the amount of gross income taxed in the other county or municipality.

 (13) to participate in multi‑county projects and programs authorized by the general law and appropriate funds therefor;

 (14) to enact ordinances for the implementation and enforcement of the powers granted in this section and provide penalties for violations thereof not to exceed the penalty jurisdiction of magistrates’ courts. Alleged violations of such ordinances shall be heard and disposed of in courts created by the general law including the magistrates’ courts of the county. County officials are further empowered to seek and obtain compliance with ordinances and regulations issued pursuant thereto through injunctive relief in courts of competent jurisdiction. No ordinance including penalty provisions shall be enacted with regard to matters provided for by the general law, except as specifically authorized by such general law; and

 (15) to undertake and carry out slum clearance and redevelopment work in areas which are predominantly slum or blighted, the preparation of such areas for reuse, and the sale or other disposition of such areas to private enterprise for private uses or to public bodies for public uses and to that end the General Assembly delegates to any county the right to exercise the power of eminent domain as to any property essential to the plan of slum clearance and redevelopment. Any county may acquire air rights or subsurface rights, both as hereinafter defined, by any means permitted by law for acquisition or real estate, including eminent domain, and may dispose of air rights and subsurface rights regardless of how or for what purpose acquired for public use by lease, mortgage, sale, or otherwise. Air rights shall mean estates, rights, and interests in the space above the surface of the ground or the surface of streets, roads, or rights‑of‑way including access, support, and other appurtenant rights required for the utilization thereof;

 (16) to conduct advisory referenda;

 (16.1) to enact ordinances to regulate solicitation within the county by requiring permits therefor, establish criteria for issuing such permits and provide for a fine of one hundred dollars or thirty days’ imprisonment for violations; and

 (16.2) To obtain injunctive relief in the Court of Common Pleas to abate nuisances created by the operation of business establishments in an excessively noisy or disorderly manner which disturbs the peace in the community in which such establishments are located. Such injunctive relief shall be initiated by petition of the County Attorney in the name of the County Council not sooner than ten days following noncompliance with a written notice to the owner of the offending establishment or his agent to cease and desist in the conduct or practice which disturbs the peace and good order of the area. The provisions of this item are supplemental to Chapter 43 of Title 15.

 (17) to exercise such other powers as may be authorized for counties by the general law. The governing body of any county shall not create a special tax district, other than watershed district, any portion of which falls within the corporate boundaries of a municipality, except upon the concurrence of the governing body of the municipality.

HISTORY: 1962 Code Section 14‑3703; 1975 (59) 692; 1976 Act No. 601; 1976 Act No. 693; 1977 Act No. 74; 1982 Act No. 420; 1988 Act No. 312, Section 1, eff February 24, 1988; 1988 Act No. 495, Section 1, eff May 9, 1988; 1989 Act No. 176, Section 2, eff June 6, 1989; 1991 Act No. 114, Sections 1, 2, eff June 5, 1991; 1994 Act No. 405, Section 1, eff May 24, 1994; 1999 Act No. 113, Section 21, eff June 30, 1999.

Code Commissioner’s Note

Chapter 35 of Title 33 referred to in paragraph (4) has been repealed. The reference should be to Chapter 36 of Title 33 entitled “Corporations Not‑for‑Profit Financed by Federal or State Loans.”

Editor’s Note

Paragraph (4) of this section, as it appears in the bound volume, contains a typographical error. It is reprinted in this supplement in its correct form.

1995 Act No. 52, Section 1, provides as follows:

“SECTION 1. In furtherance of the powers granted to the counties of this State pursuant to the provisions of Section 4‑9‑30, and Section 6‑21‑10 et seq., of the 1976 Code, each of the counties of this State is authorized to establish transportation authorities and to finance, following the public hearing and referendum required in this act, the cost of acquiring, designing, constructing, equipping and operating highways, roads, streets, and bridges, and other transportation‑related projects, either alone or in partnership with other governmental entities including, but not limited to, the South Carolina Department of Transportation.”

1999 Act No. 113, Section 21D, effective June 30, 1999, provides as follows:

“Notwithstanding any other provision of this section or any other provision of law, the provisions of this section shall not affect, alter, or abrogate contracts existing and in effect on the effective date of this act.”

2005 Act No. 145, Section 56, provides as follows:

“Notwithstanding the provisions of Section 12‑43‑217 of the 1976 Code, a county which conducted a countywide property tax equalization and reassessment program after 2000 which has not yet been implemented, may by ordinance postpone the implementation for one additional year.”

Effect of Amendment

The first 1988 amendment (1988 Act No. 312, Section 1) rewrote paragraph (7), relating to employee discharge and grievance procedures.

The second 1988 amendment (1988 Act No. 495, Section 1) rewrote paragraph (12) adding a provision exempting from the license tax any entity exempt under any other law, and adding a provision limiting the right to levy a business license tax on businesses making loans secured by real estate.

The 1989 amendment, in paragraph (5), added the third paragraph.

The 1991 amendment, in paragraph (5), in what later became subparagraph (f), added “After a special tax district is created, pursuant to the provisions of this item, the governing body of the county may, by ordinance, provide that the uniform service charge be collected on an annual, semiannual, quarterly, or monthly basis.”

The 1994 amendment, in paragraph (12), added a sentence providing “No county license fee or tax may be levied on insurance companies.”

The 1999 amendment inserted “and make charges” and the last provision regarding applicability to franchises and contracts for use of public beaches in subsection (11).

CROSS REFERENCES

Annexation of a special purpose district, see Section 5‑3‑310.

Constitutional provision permitting General Assembly to establish powers of county governments, see SC Const, Art 8, Section 7.

County and Municipal Employees Grievance Procedure Act, see Sections 8‑17‑110 et seq.

County housing authorities, see Sections 31‑3‑710 et seq.

Imposition of business license tax or increase in rate thereof, see Section 6‑1‑315.

Officers and employees generally, see Title 8.

Protection of public employees who report violations of the law, see Sections 8‑27‑10 et seq.

Repair, closing or demolition of dwellings unfit for human habitation in counties, see Sections 31‑15‑310 et seq.

Taxation generally, see Title 12.

LIBRARY REFERENCES

20 C.J.S., Counties Sections 40, 49, 108.

RESEARCH REFERENCES

ALR Library

97 ALR 5th 123 , Validity, Construction, and Application of Road or Transportation Impact Fee Statutes or Ordinances.

Encyclopedias

S.C. Jur. Clerks of Court Section 7, Term of Office and Vacancies.

S.C. Jur. Clerks of Court Section 15, Personnel Policy.

S.C. Jur. Constitutional Law Section 12.1, “Home Rule”‑The Power of Municipalities to Enact Regulations and Ordinances.

S.C. Jur. Eminent Domain Section 15, Counties.

S.C. Jur. Public Nuisance Section 30, Power of County Governments to Abate Nuisances.

S.C. Jur. Public Officers and Public Employees Section 39, Setting and Altering Compensation.

S.C. Jur. Public Officers and Public Employees Section 53, County and Municipal Employees.

S.C. Jur. Public Officers and Public Employees Section 57, Home Rule Act.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Constitutional Law: Home Rule; Local Government. 29 S.C. L. Rev. 47.

United States Supreme Court Annotations

Free speech, sign ordinance imposing differing restrictions on temporary directional signs to religious events was content‑based regulation of speech that did not survive strict scrutiny, see Reed v. Town of Gilbert, Ariz., 2015, 135 S.Ct. 2218, 192 L.Ed.2d 236. Constitutional Law 1664; Zoning and Planning 1111

Zoning and planning, denial of application to build cell phone tower requires written reasons issued essentially contemporaneously with denial, see T‑Mobile South, LLC v. City of Roswell, Ga., 2015, 135 S.Ct. 808, 190 L.Ed.2d 679. Zoning and Planning 1429

Attorney General’s Opinions

This section does not conflict with Section 6‑1‑330. S.C. Op.Atty.Gen. (March 14, 2017) 2017 WL 1095386.

It is the legal responsibility of each coastal county to maintain and cleanup any debris in the tideland areas between mean high and low tide. S.C. Op.Atty.Gen. (January 31, 2017) 2017 WL 569547.

The Clarendon County Council is authorized to set the annual millage of the Clarendon County Fire Protection Service Area in an amount determined by council to be necessary for operating purposes. S.C. Op.Atty.Gen. (December 30, 2015) 2015 WL 9701674.

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

Discussion of various questions relating to the Savannah Lakes Village Special Tax District’s taxing and spending authority, and ability to contract with other governmental entities. 2014 S.C. Op.Atty.Gen. (August 24, 2015) 2015 WL 5254329.

After a public hearing, Chesterfield County could reduce the size of a special purpose district created in 1985 pursuant to referendum. 2014 S.C. Op.Atty.Gen. (July 16, 2015) 2015 WL 4596715.

The Chesterfield County Council may change a fire district boundary without the agreement or consent of the entire district’s board of directors. 2014 S.C. Op.Atty.Gen. (July 16, 2015) 2015 WL 4596715.

The provision of office space to county legislative delegation. 2014 S.C. Op.Atty.Gen. (April 27, 2015) 2015 WL 2148108.

Discussion of governmental immunity, relating to special tax district commissions and individual commissioners. 2014 S.C. Op.Atty.Gen. (April 9, 2015) 2015 WL 1870567.

Discussion of legal representation, resources or protections which are available to a county veterans’ affairs officer who is subject to a lawsuit based on a personnel action. 2014 S.C. Op.Atty.Gen. (December 12, 2014) 2014 WL 7342086.

Discussion of the ownership of the Georgetown County Rice Museum/Town Clock. S.C. Op.Atty.Gen. (September 23, 2014) 2014 WL 4953184.

The county administrator is not responsible for the administration of the library board of trustees. S.C. Op.Atty.Gen. (July 28, 2014) 2014 WL 3886690.

A court would likely deduce the tax commission has authorization to purchase the assets necessary for the function of the special tax district. S.C. Op.Atty.Gen. (July 17, 2013) 2013 WL 3960433.

A supervisor in a council‑supervisor form of government under is an elected official based on Section 4‑9‑410 both generally speaking and for purposes of Section 4‑9‑30(7). S.C. Op.Atty.Gen. (April 2, 2013) 2013 WL 1695510.

As an elected official, the supervisor does not fall within the authority of personnel policies and procedures for county employees. S.C. Op.Atty.Gen. (April 2, 2013) 2013 WL 1695510.

Under a county‑supervisor form of government, a court in South Carolina is likely to find a county council may not hire a county employee, but county council would have the ability to create a position and to fund it. S.C. Op.Atty.Gen. (April 2, 2013) 2013 WL 1695510.

The County Council would improperly alter or expand the statutory duties of the Treasurer if it were to force the Treasurer to operate and maintain a satellite office. S.C. Op.Atty.Gen. (May 7, 2012) 2012 WL 1774920.

A business license tax imposed by a county or municipality must be calculated using gross income. S.C. Op.Atty.Gen. (April 23, 2012) 2012 WL 1561868.

County lacks the authority to enforce an ordinance, purporting to terminate employees of the county who become candidates for an elected county office, against the clerk of the probate court. S.C. Op.Atty.Gen. (Feb. 21, 2012) 2012 WL 628476.

Any conveyance of public property or use of public funds must serve a public purpose. Whether a particular transaction meets these requirements is a fact‑specific inquiry for determination by county council in the first instance. Courts will not disturb this determination absent a clear showing of fraud or abuse of authority. S.C. Op.Atty.Gen. (Jan. 12, 2012) 2012 WL 440538.

Although the county veterans’ affairs officer is not subject to a county’s grievance policy, and is accountable to the delegation that selects him in accordance with Section 25‑11‑40 (B), the county veterans’ affairs officer remains a county officer rather than a state officer; he thus would not be subject to State personnel policies in this regard. S.C. Op.Atty.Gen. (Nov. 18, 2011) 2011 WL 6120333.

There is no legislative authority empowering the delegation to adopt grievance policies applicable to the veterans’ affairs officer, and that any attempt by the delegation to do so may be deemed void by a court. S.C. Op.Atty.Gen. (Nov. 18, 2011) 2011 WL 6120333.

County Council may provide fire protection services to some areas of the county and not in others. S.C. Op.Atty.Gen. (May 18, 2011) 2011 WL 2214059.

The Florence County Council cannot interfere with any of the duties and responsibilities given to elected county officials under State law, does not have authority to employ or discharge personnel under the direction of County elected officials, and must provide County elected officials with a budget sufficient to perform the functions of their offices. S.C. Op.Atty.Gen. (April 29, 2011) 2011 WL 1740743.

1983 opinion concerning the Constitutionality of the South Lynches Fire District’s enabling legislation overruled; a court would likely conclude the enabling legislation is not a law for a specific county. S.C. Op.Atty.Gen. (April 15, 2011) 2011 WL 1740746.

Florence County may use its road maintenance fee proceeds to operate the Public Works Department if all of the proceeds are used for purposes contemplated by the ordinance that established the fee; otherwise, it would be considered a tax. S.C. Op.Atty.Gen. (Feb. 18, 2011) 2011 WL 782317.

So long as the fee charge for a development site review is valid in all other respects, a County can assess a per square foot fee for this review. S.C. Op.Atty.Gen. (Feb. 24, 2010) 2010 WL 928440.

Decision by county to restrict funding based on municipal population does not violate state law. S.C. Op.Atty.Gen. (Jan. 11, 2010) 2010 WL 440991.

Jailers and jail administrators are not subject to grievance procedure adopted by Williamsburg County Council. 1993 Op Atty Gen No. 93‑77.

An employee can work for both the Edgefield County Treasurer and the County Tax Collector. 1992 Op Atty Gen No 92‑65.

The Edgefield County Council can reduce the salary budget for the County and thereby reduce the staff of the Treasurer’s Office. Whether such reduction will cause the Treasurer’s Office to function improperly is a question for the electorate to decide and resolve. 1992 Op Atty Gen No 92‑65.

The Edgefield County Council cannot reduce the County Treasurer’s salary for duties no longer performed. 1992 Op Atty Gen No 92‑65.

The Edgefield County governing body is responsible for establishing the employee’s work schedule. 1992 Op Atty Gen No 92‑65.

There appears to be no State statutes or other specific authority dealing with the sale or lease of advertising space on publicly owned county or municipal property, such as school property to the private sector. However, once the use of public property is made available, First Amendment constitutional guarantees may be applicable. 1992 Op Atty Gen No 92‑69.

While a sheriff, as chief law enforcement officer of a county, is statutorily obligated to patrol his county, which presumably would include a municipality within that county, a sheriff, as a county official, is not generally considered to be obligated to provide specific services within a municipality. However, a sheriff could offer a contract law enforcement services to a municipality. 1992 Op Atty Gen No 92‑67.

Any contract between county and private entity for service of civil process should comply with provisions of Section 4‑9‑30(5)(d) where necessary. 1991 Op Atty Gen, No. 91‑10, p 41.

Appointment of individuals as special deputies to serve civil process only, with no other law enforcement authority, would not appear to conflict with statutory provisions mandating training for law enforcement officers generally. 1991 Op Atty Gen, No. 91‑10, p 41.

Appointment of special constable pursuant to Section 4‑9‑145 to provide supplemental law enforcement for municipality could constitute conflict with Section 4‑9‑30 inasmuch as it could be duplicative of duties and functions already performed by sheriff. Also, such might possibly be considered restructuring or reorganization of sheriff’s department, therefore such appointment would not be authorized absent compliance with referendum requirements of Section 4‑9‑30. 1991 Op Atty Gen, No 91‑56, p 142.

County could incur bonded indebtedness to assist in construction of water line from city to town if council decides that public and corporate purposes are being served. County’s levying of taxes merely for use and benefit of municipality would not be acceptable. 1991 Op Atty Gen No 91‑49, p 128.

County manager is chief administrative officer of county and is responsible for employment and discharge of personnel subject to Section 4‑9‑30(7) which would encompass appointed treasurer along with other department heads. 1991 Op Atty Gen No 91‑31, p 84.

State law does not appear to authorize school board to call for referendum concerning method of election of its members or to request county election commission to put such question on ballot of next general election. A court would likely conclude that such referendum would be of no effect. In any event, referendum could not be used to change law enacted by General Assembly absent express authorization from legislature. 1991 Op Atty Gen, No. 91‑12 p 46.

Taxes collected for specific public purposes cannot be diverted to fund unbudgeted expenses unless purpose for which tax was levied is first satisfied. 1991 Op Atty Gen, No. 91‑21 p 68.

There is no requirement mandating county council approval where vehicle seized during drug operation is traded for another vehicle. 1991 Op Atty Gen No 91‑48, p 123.

Whether sheriff in making purchases with proceeds from sale of vehicles seized during drug operations is required to obtain approval of county council would depend upon whether such expenditure constitutes a “recurring expense.” 1991 Op Atty Gen No 91‑48, p 123.

While county council is vested with discretion in dealing with many appropriations from standpoint of general economic and efficiency concerns, such discretion may not be utilized in manner which would interfere with decisions of sheriff as to hiring and discharge of deputy sheriff. Thus it is extremely doubtful whether action could be taken by county council to withdraw appropriation for position of particular deputy sheriff. Such could be construed as indirectly terminating particular deputy sheriff’s position which is a position county council is not empowered to abolish directly. 1991 Op Atty Gen No 91‑48, p 123.

County governing body is without authority to abate or waive penalty. 1990 Op Atty Gen No. 90‑6.

County is without authority to adopt ordinance that could either totally ban sale and use of fireworks in unincorporated areas of county or regulate areas where fireworks could be sold and used and times of such use. Adoption of such ordinance would further regulate possession, sale or use of fireworks and would thus be invalid. 1990 Op Atty Gen No. 90‑53.

County or municipality incurring general obligation debt would be required to pledge full faith, credit, and tax and power to repay debt. No political subdivision has been authorized by constitution or statute to incur such indebtedness and then obligate another entity to repay it; instead, such repayment would be made from general revenue sources of subdivision incurring debt. 1990 Op Atty Gen No. 90‑20.

County treasurer is without authority to override directive of county governing body that county office buildings be closed in observance of Martin Luther King’s birthday, January 15, 1990. 1990 Op Atty Gen No. 90‑17.

Damage‑assessment hearing with notice to party in default is required prior to entry of default judgment whenever the claim is for unliquidated damages. Two Supreme Court cases are instructive regarding procedure to be followed in event court holds damage‑assessment hearing. Law is not clear regarding definition of term “liquidated damages” in context of default proceeding. 1990 Op Atty Gen No. 90‑47.

Governing body of county is without authority to extend date that penalties are imposed by Section 12‑45‑180 for late payment of property taxes. 1990 Op Atty Gen No. 90‑17.

Only county council could properly allocate seized gambling proceeds for employee’s moving expenses. However, such expenses should not be paid in absence of specific authorization. 1990 Op Atty Gen No. 90‑8.

There is no absolute statutory or constitutional prohibition on county council’s entering into contract in waning days of terms of some council members; whether legal grounds exist for avoiding contract entered into by outgoing or “lame duck” county council would depend on facts and circumstances surrounding adoption of contact. 1990 Op Atty Gen No. 90‑62.

A county may create a special tax district to provide garbage service and may levy an ad valorem tax on property within the district, provided that the levy is equal and uniform to all persons and property within the tax district. 1989 Op Atty Gen, No. 89‑58, p 145.

Any action by county council through its budgetary process cannot interfere with the sheriff’s role as chief law enforcement officer in his county. 1989 Op Atty Gen, No. 89‑55, p 138.

In order to levy a countywide property tax to provide garbage service, a county must have been providing the service on March 7, 1973 exclusively; if a municipality was providing similar service in 1973, the county must obtain the consent of the municipality’s governing body to levy the tax; a uniform service charge for garbage collection may be judicially endorsed; a county treasurer may not be empowered to sell the property of a person failing to pay the service charge. 1989 Op Atty Gen, No. 89‑58, p 145.

Section 58‑23‑620 of the South Carolina Code of Laws precludes the imposition by a county of its business license tax upon the holders of Class E or F Certificates issued such businesses by the Public Service Commission under authority of Section 58‑23‑510, et seq. 1989 Op Atty Gen, No. 89‑130, p 354.

State law appears to permit the ownership and operation of a railroad line or other transportation service by a county, municipality or other political subdivision. 1989 Op Atty Gen, No. 89‑27, p 74.

The constitutionality of the business license ordinance of Jasper County is highly suspect because of the disparity between the tax rates of the different classifications, which in all probability denies equal protection of the laws to all businesses within the county. 1989 Op Atty Gen, No. 89‑26, p 72.

The members of a county board of mental retardation are to be appointed by ordinance of the County Council when the board is created under Section 4‑9‑30; the State Department of Mental Retardation must approve the disbursement of any funds under its control to such a board subject to a contract between the State Department and the board. 1989 Op Atty Gen, No. 89‑38, p 107.

The recent decision of the State Supreme Court in Heath v. County of Aiken, is solely applicable to Section 4‑9‑30(7) as it read prior to its being amended this year by the General Assembly. However, with the amendment, no employee of an elected official, such as a sheriff, who is discharged by such official, is entitled to a grievance hearing under Section 4‑9‑30(7). 1988 Op Atty Gen, No. 88‑68, p 199.

Because the county supervisor is directly elected by the people, the county’s personnel system policies and procedures are inapplicable to the supervisor. 1987 Op Atty Gen, No. 87‑27(2), p 82.

Only a court could make an absolute conclusion as to whether action by a county council in not funding certain positions within the sheriff’s department would constitute a “reorganization” or “restructuring” of the sheriff’s department and thus require a referendum. (Note: Opinion based in part on language deleted from Section 4‑9‑30(5) by 1991 amendment.) 1987 Op Atty Gen, No. 87‑72, p 183.

There appears to be no provision in state law which would allow an elected official such as a county supervisor to receive payment for unused vacation or annual leave, partly because there appears to be no provision of law granting such leave to an elected official and further because such a payment could be deemed extra compensation in violation of Article III, Section 30 of the State Constitution. 1987 Op Atty Gen, No. 87‑27, p 82.

A county council has the authority under its police power, to adopt an ordinance regulating signs or billboards, within constitutional limitations. Annual fees, as regulatory rather than revenue‑raising measures, have been upheld, as have graduated fees based upon the size of the sign. 1986 Op Atty Gen, No. 86‑16, p 66.

In the absence of express statutory authority, it is doubtful whether classified State employees could negotiate lower salaries with their employers except in certain situations, such as budget reductions, where appropriated funds may not be available. The General Assembly could, if it so desired, expressly authorize such salary reductions. Arguably, city and county employees can, under present law, negotiate lower salaries with their employers subject to certain limitations such as one found in Section 4‑9‑30(7). However, the more cautious approach would require express statutory authority with respect to these employees as well. With respect to school districts, again it is doubtful whether these entities can, under present law, negotiate lower salaries with their employees except in contemplation of loss by funding or other similar circumstances. Thus, if school districts desire to negotiate lower salaries with their employees, express statutory authorization is probably required. 1986 Op Atty Gen, No. 86‑57, p 170.

Under the council‑administrator form of government, a county administrator, rather than a county council itself, would have authority to employ and discharge a zoning administrator once that position is established by council following the advent of home rule. 1986 Op Atty Gen, No. 86‑48, p 141.

Because Richland County Historic Preservation Commission is special purpose district and political subdivision separate from Richland County, Governor will continue to appoint Commission members pursuant to Section 3 of 1963 Act No. 69. 1985 Op Atty Gen, No. 85‑35, p 111.

County cannot decrease its funding to salary of County Auditor and County Treasurer by reason of amount of state funding for those officers. 1985 Op Atty Gen, No. 85‑113, p 315.

County possesses power to adopt ordinance providing criminal penalties for making excessive noise, and such ordinance does not violate State Constitution or Home Rule Act. 1985 Op Atty Gen, No. 85‑105, p 297.

Hiring and discharge of deputy sheriff are matters solely within prerogative of sheriff, and it is extremely doubtful whether action could be taken by county council to withdraw appropriation for particular deputy sheriff’s position so as to result in termination of particular deputy. 1985 Op Atty Gen, No. 85‑82, p 231.

In abolishing special tax district, safest and most prudent course would be to follow same procedures set forth in Section 4‑9‑30‑5 for creation of such district. 1985 Op Atty Gen, No. 85‑65, p 179.

Pursuant to 1985 Act No. 163, which amended Section 23‑19‑10, sheriffs are required to turn over to county all fees and commissions collected by them, but it is doubtful whether amounts equivalent to fees and commissions previously retained by sheriff as part of his compensation may be withheld by county council from sheriff’s compensation; because compensation of sheriffs cannot be reduced during their terms, amounts equivalent to those fees and commissions retained prior to enactment of Act No. 163 should be reimbursed to sheriff by county council as part of his compensation. 1985 Op Atty Gen, No. 85‑96, p 271.

Sheriff has absolute authority regarding employment and discharge of personnel within his department; such personnel are subject to “general personnel system policies and procedures” of county; county anti‑nepotism ordinance would be inapplicable to any employment decisions made by sheriff; applications for employment should be handled by county and not sheriff. (Note: Sheriffs are subject to state anti‑nepotism statute Section 8‑13‑750.) 1985 Op Atty Gen, No. 85‑7, p 40.

A county governing body cannot alter duties of County Treasurer. Any duplication of duties by Treasurer and Finance Department may be eliminated by providing that Treasurer’s office perform such duties. Duties assigned to Treasurer cannot be removed from that office. 1984 Op Atty Gen, No. 84‑15, p. 47.

Both municipalities and counties have authority to regulate massage parlors pursuant to their general police powers, so long as such are not inconsistent or in conflict with Section 40‑29‑10, et seq., or any other general law. 1984 Op Atty Gen, No. 84‑66, p. 166.

Term “special purpose district” contained in Act No. 488 of 1984 is broad and open‑ended. There are many factors to be considered in determining whether entity is special purpose district under terms of Act No. 488; actual determination must be made on individual basis. 1984 Op Atty Gen, No. 84‑132, p. 310.

A county is authorized to develop personnel system policies and procedures that would include magistrates’ secretaries, but such policies and procedures could not regulate the employment and termination of such secretaries. 1983 Op Atty Gen, No. 83‑7, p. 18.

A county may not appropriate funds to a reserve account for use and expenditure in subsequent years. [Note: see Section 12‑43‑296 for specific grant of authority to maintain reserve accounts which was adopted after this opinion was issued.] 1983 Op Atty Gen, No. 83‑32, p. 49.

The Marion County Council may not by ordinance provide for additional fines in Magistrates’ Court for use by the Commission on Alcohol and Drug Abuse. 1983 Op Atty Gen, No. 83‑47, p. 69.

A county, under the authority conferred upon it by Code Section 4‑9‑30(12), may impose a license tax upon a municipality which owns a water system extending into unincorporated areas of the county. 1982 Op Atty Gen, No 82‑56, p 60.

The governing body [of Aiken County] is without authority to provide a penalty for late payment of property taxes that is in conflict with general law. 1979 Op Atty Gen, No 79‑85, p 115.

The salary of the Auditor of Jasper County was set for the 1979‑80 fiscal year by the budget adopted for that year and cannot be later reduced during the year or the elected term. 1979 Op Atty Gen, No 79‑103, p 145.

The governing body of Union County may by ordinance require a permit to move a mobile home provided the same does not conflict with Section 31‑17‑310 of the 1976 Code of Laws and the permit is a means to insure payment of the ad valorem taxes; a person that owns a mobile home on December 31 preceding the tax year and subsequently sells the same is liable for the tax; the lien for unpaid property taxes attaches to and follow the property. 1978 Op Atty Gen, No 78‑5, p. 11.

After adoption of a form of government provided by the “Home Rule” legislation, the Abbeville County Council can initially set the salary of its members; however, if the County Council later changes the salary of its members, that change cannot become effective until after the next general election for County Council members when the terms of office of the members elected therein begin. 1976‑77 Op Atty Gen, No 77‑225, p 172.

A county council may not provide county funds for a secretary to be employed by a Federal agency. 1976‑77 Op Atty Gen, No 77‑198, p 149.

A county governing body is authorized to create a water shed conservation district with taxing authority, pursuant to Section 14‑3703(5) [1976 Code Section 4‑9‑30]. 1976‑77 Op Atty Gen, No 77‑173, p 136.

A member of the Richland County Council is authorized by law to have access to County records, such as personnel records. 1976‑77 Op Atty Gen, No 77‑380, p 304.

Classifications may be created for county license tax purposes provided the same are reasonable; however, it is doubtful that a tax on one class to the exclusion of all other persons or businesses would be reasonable. 1976‑77 Op Atty Gen, No 77‑343, p 273.

The Aiken County Council may not turn over to a private eleemosynary corporation the operation of a juvenile detention center, as such would be prohibited by Home Rule legislation. 1976‑77 Op Atty Gen, No 77‑157, p 130.

The governing body of Laurens County is without authority to void or negate the valuations of the property as ascertained by the assessor for the 1977 tax year and may not therefore revoke the same and substitute the 1976 tax base; The governing body is now without authority to alter the ratio upon which the assessed values of property were ascertained for the 1977 tax year and reflected upon the tax duplicate. 1976‑77 Op Atty Gen, No 77‑319, p 249.

The provisions of Act No. 283 of 1975, the “Home Rule” legislation, do not empower the Lexington County Council to alter the salary of the Lexington County Legislative Delegation’s Secretary once the delegation has set it. 1976‑77 Op Atty Gen, No 77‑222, p 171.

The provisions of Act No. 283 of 1975, the “Home Rule” legislation, do not expressly or impliedly empower a county council to enter into long‑term borrowing agreements. The provisions of new Article X of the South Carolina Constitution of 1895, as amended, which becomes effective November 30, 1977, authorizes a county to incur indebtedness only through the “bonded debt” route or through a revenue‑producing project of a special source. 1976‑77 Op Atty Gen, No 77‑264, p 197.

The Spartanburg County Council may assess residential property owners a uniform charge for garbage collection and, at the same time, assess industries a service charge for waste collection which varies with the quantity of waste collected; An unpaid service charge for garbage collection cannot constitute a lien upon the property. 1976‑77 Op Atty Gen, No 77‑19, p 27.

A Cherokee County ordinance which would prohibit the disposal of industrial solid waste in a disposal site previously permitted by the South Carolina Department of Health and Environmental Control would be construed as void if challenged in the Courts of the State of South Carolina. 1975‑76 Op Atty Gen, No 4520, p 381.

After July 1 and upon approval of the form of government by the Justice Department, Chesterfield County will be able to exercise the power of Eminent Domain granted to it under 1962 Code Section 14‑3703(4) [1976 Code Section 4‑9‑30(4)]. 1975‑76 Op Atty Gen, No 4387, p 222.

It is unlikely that a county may require property owners to dedicate land free of charge for right‑of‑way, as such would be an unconstitutional deprivation of property. 1975‑76 Op Atty Gen, No 4525, p 389.

The Union County Council can deed real property to another political subdivision without receiving compensation. 1975‑76 Op Atty Gen, No 4525, p 389.

Under the Home Rule Act, municipal ordinances may prescribe a maximum punishment not exceeding $200 or 30 days, whereas county ordinances may prescribe punishment not to exceed those of Magistrates’ Courts of the county; county ordinances may not require penalties concerning litter, gun control or freedom of information; municipal ordinances may set penalties relating to firearms if they do not conflict with general laws of the state; however, municipal ordinances may not deal with freedom of information. 1975‑76 Op Atty Gen, No 4355, p 184.

Under the “home rule” act, the Greenville County Council cannot create bird sanctuaries by ordinance. 1975‑76 Op Atty Gen, No 4496, p 353.

Act No. 283 of 1975 [Chapter 9 of Title 4 and Chapters 1, 5, 7, 9, 11, 13, 15, 17 of Title 5 of 1976 Code], the “home rule” legislation does not grant to counties the authority to pass ordinances for the regulation of noise pollution or to provide penalties for the violation thereof. 1974‑75 Op Atty Gen, No 4118, p 192.

County Council has no authority to amend the requirements of a statewide act. 1974‑75 Op Atty Gen, No 4093, p 169.

County governing bodies become vested with the powers specified in Act No. 283 of 1975, the “home rule” legislation, either upon their adoption of one of the forms of government pursuant to Code 1962 Section 14‑3701(a) [Code 1976 Section 4‑9‑10(a)] or on July 1, 1976, pursuant to Code 1962 Section 14‑3701(b) [Code 1976 Section 4‑9‑10(b)]. 1974‑75 Op Atty Gen, No 4043, p 118.

The Dorchester County Council cannot require the County Sheriff to deposit his fees and commissions into the County General Fund. 1974‑75 Op Atty Gen, No 4216, p 259.

The Greeville County Council does not have the authority to eliminate township magistrates in Greenville County; the Greenville County Council does not have the authority to terminate salary payments to the township magistrates of Greenville County. 1974‑75 Op Atty Gen, No 4119, p 194.

The qualified electors of a county have no authority under Act No. 283 of 1975 [Chapter 9 of Title 4 and Chapters 1, 5, 7, 9, 11, 13, 15 and 17 of Title 5 of 1976 Code], the “home rule” legislation, to remove a member of the governing body of the county from office through the enactment of an ordinance by initiative and referendum. 1974‑75 Op Atty Gen, No 4104, p 181.

NOTES OF DECISIONS

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1. In general

Creation of special water and sewer district by county council ordinance following public referendum did not violate due process rights of owners of nuclear power plant located in county; owners of nuclear plant lacked standing to challenge dual ballot box procedure used in referendum; and ad valorem assessment levied pursuant to adopted ordinance was not unconstitutional taking of property. North Carolina Elec. Membership Corp. v. White, 1989, 722 F.Supp. 1314.

County administrator did not have authority under the Home Rule Act to suspend three employees of county auditor for violating personnel policies, as auditor was an elected official. Eargle v. Horry County (S.C. 2001) 344 S.C. 449, 545 S.E.2d 276. Counties 67; Public Employment 254

A county’s authority under the Home Rule Act to promulgate personnel policies applicable to all county employees does not cloak the county administrator with the power to suspend employees of elected officials. Eargle v. Horry County (S.C. 2001) 344 S.C. 449, 545 S.E.2d 276. Counties 24; Counties 67; Public Employment 254

Remand to the trial court was required for a finding on whether county administrator acted without substantial justification, which was required for county auditor to be entitled to attorney fees as prevailing party in action challenging administrator’s authority under the Home Rule Act to suspend three of her employees for violating personnel policies. Eargle v. Horry County (S.C. 2001) 344 S.C. 449, 545 S.E.2d 276. Counties 228

County administrator lacked authority to suspend the employees of county auditor, an elected official; to interpret provisions of Home Rule Act, which give county and administrator authority to develop and administer personnel system policies and procedures for regulation of county employees, as authorizing the suspension of employees of elected officials would give administrator an impermissible level of control, albeit indirect, over elected official, in violation of provision of Home Rule Act that directs that administrator shall exercise no authority over any elected officials of county. Eargle v. Horry County (S.C.App. 1999) 335 S.C. 425, 517 S.E.2d 3, rehearing denied, certiorari granted, affirmed 344 S.C. 449, 545 S.E.2d 276. Counties 24; Counties 67; Public Employment 254

County ordinance requiring office building owner to pay solid waste disposal user fees for its tenants without recorded leases based on number of employees working for each tenant was uniform as required by enabling statute, in light of fact that all other property owners were similarly billed corresponding charges for businesses or tenants located within their buildings. Skyscraper Corp. v. County of Newberry (S.C. 1996) 323 S.C. 412, 475 S.E.2d 764. Counties 21.5

A trial judge’s attempt to preserve budgetary oversight of a public service district by vesting this function in County Council under Section 4‑9‑80 violated that statute because under Section 4‑9‑80, Home Rule legislation cannot be construed to give county government more power over a pre‑Home Rule district than it is given in the original act creating such a district; therefore, although county government may exercise budgetary control over post‑Home Rule districts under Section 4‑9‑30(5), that power does not exist in relation to a public service district that predated Home Rule legislation. Thomas v. Cooper River Park (S.C. 1996) 322 S.C. 32, 471 S.E.2d 170. Counties 24

A county was not required to apportion taxes according to services provided when providing services to unincorporated areas only, on the ground that the distribution of services in the manner contested created a “de facto” special service district, since SC Const Art VIII Section 7 and Section 4‑9‑30 give counties discretionary power to establish service districts; thus, the court properly held that the county did not violate those sections. Davis v. County of Greenville (S.C. 1994) 313 S.C. 459, 443 S.E.2d 383.

A service charge is imposed on the theory that the portion of a community which is required to pay the fee receives some special benefit as a result of the improvements with the proceeds of the charge and does not become a tax merely because the general public obtains a benefit. The Horry County road maintenance fees go into the county general fund to be used specifically for the maintenance and improvement of county roads. Because the fee proceeds are specifically allocated for road maintenance, the fee is a service charge under Section 4‑9‑30(5). Brown v. County of Horry (S.C. 1992) 308 S.C. 180, 417 S.E.2d 565.

Under Section 4‑9‑30(5), counties can impose a service charge or user fee, such as a road maintenance fee, where it is a fair and reasonable alternative to increasing the general county property tax and is imposed upon those for whom the service is primarily provided. The amount of such fee and upon whom it is imposed are subject to the requirements of equal protection, reasonableness and uniformity. Brown v. County of Horry (S.C. 1992) 308 S.C. 180, 417 S.E.2d 565. Automobiles 25

The road maintenance fee imposed by a county on all motor vehicles registered in that county was a valid uniform service charge authorized under Section 4‑9‑30 rather than a tax, even though revenue from the fee was destined for the general fund, where the ordinance imposing the fee also provided that the fees collected were to be used for road maintenance, and thus the portion of the community required to pay the fee would receive the special benefit. Brown v. County of Horry (S.C. 1992) 308 S.C. 180, 417 S.E.2d 565.

A county could properly impose a road maintenance fee as a service charge on all motor vehicles registered in that county, pursuant to the county’s home rule authority as established by Section 4‑9‑30, since such imposition was a fair and reasonable alternative to increasing the general county property tax, and was imposed on those for whom the service was primarily provided. Brown v. County of Horry (S.C. 1992) 308 S.C. 180, 417 S.E.2d 565. Automobiles 25

A road maintenance fee imposed by a county on all motor vehicles registered in that county was uniform and thus was a valid uniform service charge authorized under Section 4‑9‑30, even though the fee was not tied to the mileage the vehicle was driven on county roads, since the fee was a flat amount per vehicle, and a mileage correlation requirement would be nearly impossible to meet. Brown v. County of Horry (S.C. 1992) 308 S.C. 180, 417 S.E.2d 565. Automobiles 46

The road maintenance fee imposed by a county on all motor vehicles registered in that county, to be used for the maintenance and improvement of county roads, did not violate equal protection since (1) the county’s placement of all registered vehicles in a single class was reasonably related to the legislative purpose of generating funds for maintaining and improving county roads, (2) no evidence was presented to show that the classification was arbitrary, and (3) the classification rested on the reasonable basis that vehicle owners are the persons who would most often use the county roads. Brown v. County of Horry (S.C. 1992) 308 S.C. 180, 417 S.E.2d 565.

Section 4‑9‑30(12), which vests counties with specific authority to levy uniform business license taxes outside the corporate limits of any municipality according to the gross income of the person or business taxed, does not violate Article VIII section 7 of the South Carolina Constitution. County‑wide distribution of revenue from an excise tax collected in only portions of the county is not prohibited by Article VIII section 7, which applies to ad valorem taxes in different areas. A license tax upon persons and businesses is an excise tax on the privilege of doing business, and no prohibition against utilization of excise taxes exists. Additionally, a business license fee is an excise tax on the owner for the privilege of doing business and is not levied on an “area”; such a tax is based upon classification and gross income, not upon the level of governmental services provided. Since Section 4‑9‑30(12) does not specify to what end excise taxes must be used, such taxes may be utilized for any lawful public purpose. Thus, the application of proceeds collected pursuant to a business license tax ordinance requiring businesses within the unincorporated areas of a county to pay annual license fees based upon classification and gross income, which was enacted pursuant to Section 4‑9‑30(12), was constitutional. Carter v. Linder (S.C. 1990) 303 S.C. 119, 399 S.E.2d 423.

Business licenses authorized under Section 4‑9‑30(12) are excise taxes and, therefore, no prohibition on the use of the revenue exists. Carter v. Linder (S.C. 1990) 303 S.C. 119, 399 S.E.2d 423.

A business license tax ordinance requiring businesses to pay annual license fees based upon classification and gross income, which was enacted pursuant to Section 4‑9‑30(12), which provides that “any such license tax shall be graduated according to the gross income of the person or business taxed,” did not violate the equal protection provisions of the state and federal constitutions, since different specific taxes may be imposed on different trades and professions and the rate of excise may vary. Carter v. Linder (S.C. 1990) 303 S.C. 119, 399 S.E.2d 423.

A business license tax ordinance enacted pursuant to Section 4‑9‑30(12) did not deprive taxpayers of their property without due process, since the ordinance provided a remedy by permitting the fee to be paid under protest and a suit to be instituted seeking recovery of payments. The due process protection of property was fully protected in that there was no deprivation of property contemplated within the taxing scheme without an opportunity to be heard. Carter v. Linder (S.C. 1990) 303 S.C. 119, 399 S.E.2d 423.

The plain language of Section 4‑9‑30(7) limits the county government’s power to employ or discharge elected officials or those under their direction; it does not restrict the county government’s ability to determine compensation for elected officials except to prohibit reduction of an elected official’s salary during his or her term of office. Thus, the payment of accumulated leave benefits to elected officials as part of their compensation did not violate Section 4‑9‑30(7). Bales v. Aughtry (S.C. 1990) 302 S.C. 262, 395 S.E.2d 177.

Payment of leave benefits to elected officials does not violate Section 4‑9‑30(7) of Article 3, Section 30 of the S.C. Constitution. This is consistent with the general statutory authority providing that county government may determine the compensation for county officers. Bales v. Aughtry (S.C. 1990) 302 S.C. 262, 395 S.E.2d 177.

Section 4‑9‑30(9) authorizes counties to provide for land use regulation subject to the provisions of Chapter 7 of Title 6 (zoning), including internal configuration requirements for “peep booths” in sexually oriented businesses. Centaur, Inc. v. Richland County (S.C. 1990) 301 S.C. 374, 392 S.E.2d 165.

A county ordinance regulating sexually oriented businesses was a proper exercise of the county’s statutory zoning authority. The regulation of sexually oriented businesses and their interiors, pertaining as it does to the public use of buildings, is plainly embraced by Sections 4‑9‑30(9) and 6‑7‑710. Centaur, Inc. v. Richland County (S.C. 1990) 301 S.C. 374, 392 S.E.2d 165.

Where a county ordinance violated state law by creating a new special purpose district which overlapped the old special purpose district, it was necessary for a new ordinance to be enacted in accordance with the prerequisites of Section 4‑9‑30(5)(b). Thus, a subsequent ordinance, which was adopted pursuant to Sections 6‑11‑410 to 470 and which reduced the size of the old district in order to eliminate any overlap between the new and old districts, could not be given retroactive effect as remediation since the previous ordinance it sought to correct could not be validated. The county counsel’s mere removal of overlap from the prohibited district without full compliance with Section 4‑9‑30(5)(b) could not resurrect the illegal previous ordinance. North Carolina Elec. Membership Corp. v. White (S.C. 1990) 301 S.C. 274, 391 S.E.2d 571.

A deputy sheriff who was fired by the sheriff was not entitled to a discharge hearing before the county council under Section 4‑9‑30(7) since the statutory grievance procedure is inapplicable to deputies. Botchie v. O’Dowd (S.C. 1989) 299 S.C. 329, 384 S.E.2d 727. Public Employment 455; Sheriffs And Constables 6

Although Section 23‑13‑10 grants a sheriff unreviewable employment and discharge authority over deputies in terms of a council‑implemented grievance procedure because deputies are not included within the term “employees” used in Section 4‑9‑30(7), Section 23‑13‑10 did not preclude judicial review of a claim of wrongful discharge based upon a violation of a deputy’s constitutional free speech rights. To hold otherwise would strip the courts of their power of review and thereby place a sheriff’s discharge decision beyond the reach of the very constitution which creates the sheriff’s office. Botchie v. O’Dowd (S.C. 1989) 299 S.C. 329, 384 S.E.2d 727.

An ordinance enacted pursuant to Section 4‑9‑30(5) authorizing the creation and operation of a county‑wide sewage system, which established a special tax district embracing the entire unincorporated area of the county and imposed an ad valorem tax of 3 mills upon all taxable property in the area, fully complied with the uniformity requirement of Article X, Section 6 of the South Carolina Constitution. Additionally, the ordinance did not violate the constitutional guarantee of equal protection when applied to all residents within the unincorporated area, including those who received no sewage service as well as those who received sewage service by contract with existing facilities. Ex parte Yeargin (S.C. 1988) 295 S.C. 521, 369 S.E.2d 844.

For purposes of personnel system policies under Section 4‑9‑30(7), the term “employees” does not include deputies but does include sheriff’s department personnel other than deputies. Heath v. Aiken County (S.C. 1988) 295 S.C. 416, 368 S.E.2d 904.

Act 499, which deals with assessments and special charges and not with taxes, simply gives counties another way to comply with Article 10 Section 12, and provisions for creating special tax districts contained in Section 4‑9‑30(5)(a)‑(c) did not exhaust power of legislature to specify means by which counties could impose assessments, taxes, and charges required by Article 10 Section 12. Robinson v. Richland County Council (S.C. 1987) 293 S.C. 27, 358 S.E.2d 392.

Act which amended SC Code Ann Sections 6‑15‑10, 6‑15‑60 and 6‑15‑110, which dealt with assessments and special charges and not with taxes, does not unconstitutionally violate Article VIII, Sections 7 and 14 of SC Constitution, as amendments simply gave counties another way to comply with Article X, Section 12. Robinson v. Richland County Council (S.C. 1987) 293 S.C. 27, 358 S.E.2d 392.

City planning to locate sewage treatment facility just across line into a county other than the one in which the city was located, was not required to obtain approval of the county in which the facility would be located, where the city’s facility would not be in competition with the county’s facility or prevent the county from exercising its taxing or regulatory authority. Anderson County v. Combined Utility Com’n of City of Easley (S.C. 1986) 290 S.C. 85, 348 S.E.2d 359.

The Home Rule Act (Sections 4‑9‑10 et seq.), while preventing the General Assembly from enacting “special legislation” and voiding any “special legislation” which contradicts the general law, does not operate retroactively to abolish all “special legislation” which was in effect in South Carolina prior to the enactment of the Home Rule Act. Graham v. Creel (S.C. 1986) 289 S.C. 165, 345 S.E.2d 717. Municipal Corporations 65

Since an act which created the Horry County Police Commission (Code 1962 Section 53‑551) did not conflict with the general law it remained in full force and effect after the enactment of the Home Rule Act until the Horry County Council passed an ordinance abolishing the police commission and devolving its function upon the county council and/or the county administrator. (Note: Portions of case based in part on interpretation of language deleted from Section 4‑9‑30(5) by 1991 amendment of section.) Graham v. Creel (S.C. 1986) 289 S.C. 165, 345 S.E.2d 717. Counties 24; Counties 55

No county‑wide referendum was required by Section 4‑9‑30 prior to the passage of a county ordinance abolishing the Horry County Police Commission and devolving its function upon the Horry County Council and/or the Horry County Administrator, because the county ordinance did not in any manner affect the duties or functions of the sheriff’s department. (Note: Portions of case based in part on interpretation of language deleted from Section 4‑9‑30(5) by 1991 amendment of section.) Graham v. Creel (S.C. 1986) 289 S.C. 165, 345 S.E.2d 717.

No county‑wide referendum was required by Section 4‑9‑30 prior to the passage of a county ordinance abolishing the Horry County Policy Commission and devolving its functions upon the Horry County Council and/or the Horry County Administrator, because the statute only requires a county‑wide referendum when a county government is attempting to abolish a county police system. (Note: Portions of case based in part on interpretation of language deleted from Section 4‑9‑30(5) by 1991 amendment of section.) Graham v. Creel (S.C. 1986) 289 S.C. 165, 345 S.E.2d 717.

A complaint filed by former employee against her former employer, the county treasurer, failed to allege that the employee was fired because she had attempted to file a grievance against her employer where the complaint failed to allege that the county had adopted a grievance procedure pursuant to Section 8‑17‑120 and failed to allege that the employee had filed a grievance in accordance with the county’s procedures. Jones v. Gilstrap (S.C.App. 1986) 288 S.C. 525, 343 S.E.2d 646.

Under Section 4‑9‑30(14), providing that no ordinance including penalty provisions may be enacted with regard to matters provided for by the general law except as specifically authorized by such general law, a county could not enact and enforce an ordinance prohibiting the sale, possession, and discharge of fireworks in a particular area during certain periods, and establishing a penalty for its violation, since the General Assembly has created an extensive system for controlling the possession, sale, storage, and use of fireworks in Sections 23‑35‑10 et seq., a law which does not provide for the enactment of regulatory ordinances by counties. Terpin v. Darlington County Council (S.C. 1985) 286 S.C. 112, 332 S.E.2d 771.

In a declaratory judgment action to determine whether a county counsel had the authority to order a circuit solicitor to reinstatement an investigator to his former position of chief investigator in the solicitor’s office, Section 4‑9‑30 was not controlling over Section 1‑7‑405 providing that employees of a circuit court solicitor serve at his pleasure. Anders v. County Council for Richland County (S.C. 1985) 284 S.C. 142, 325 S.E.2d 538.

Authority to set property tax rate belongs to county governing body, not county auditor. Lee County v. Stevens (S.C. 1982) 277 S.C. 421, 289 S.E.2d 155.

Effect of subsection (7) of this section in a council‑supervisor form of county government is that the county council is empowered to create and fund positions for the operation of county government, but personnel to fill such positions shall be appointed by the county supervisor under Section 4‑9‑420(12). Poore v. Gerrard (S.C. 1978) 271 S.C. 1, 244 S.E.2d 510.

General power to appoint and discharge county attorney under the council‑supervisor form of county government rests with the county supervisor. Poore v. Gerrard (S.C. 1978) 271 S.C. 1, 244 S.E.2d 510.

Consistent with South Carolina Constitution Article VIII Section 7 and pursuant to Code 1962 Section 14‑3703 [Code 1976 Section 4‑9‑30] each county under forms 1‑4 of county government (Code 1962 Section 14‑3702 [Code 1976 Section 4‑9‑20]) may conduct its own governmental affairs without the necessity of periodic General Assembly intervention much as municipalities have heretofore operated. Duncan v. York County (S.C. 1976) 267 S.C. 327, 228 S.E.2d 92.

2. Construction with other statutes

Statute prohibiting salary reduction during clerks of court’s terms of office was not repealed by implication by enactment of statute prohibiting reduction of salary during term for which official is elected; statutes were not irreconcilable. Greenwood County Council v. Brooks (S.C. 2005) 362 S.C. 500, 608 S.E.2d 872. Clerks Of Courts 12

3. Salary reduction

County council did not have authority to reduce salary of interim clerk of court; statute prohibiting reduction of salary of clerk of court during term of office included unexpired term, and salary increases should be enacted for benefit of office, not immediate benefit of particular person holding office. Greenwood County Council v. Brooks (S.C. 2005) 362 S.C. 500, 608 S.E.2d 872. Clerks Of Courts 33

**SECTION 4‑9‑33.** Referendum required to approve creation of county police department.

 A referendum must be held to approve the creation of a county police department prior to the implementation of an ordinance adopted by a county council which would duplicate or replace the law enforcement functions of a sheriff. As used in this section, the term law enforcement means those activities and duties which require the exercise of custodial arrest authority by a sheriff or his duly appointed and sworn deputy or the performance of duties conferred by state law upon a sheriff and those activities incidental to the performance of law enforcement duties.

 Nothing in this section shall be construed as a limitation on the authority of a county council to provide litter control and animal control, to appoint and commission code enforcement officers as provided for in Section 4‑9‑145, to provide other services not directly related to law enforcement, to exercise the powers conferred by general law upon counties to protect the public health, safety, and general welfare of the community, or to adopt capital and operating budgets for the operation of the county as provided for in Section 4‑9‑140.

 A county council may provide for E‑911 services as provided for in Chapter 47 of Title 23; provided, however, that access to criminal records databases and other similar restricted databases relating to law enforcement functions must remain under the supervision of the sheriff or his designee unless law enforcement functions are transferred to a county police department pursuant to a referendum provided for in this section.

HISTORY: 1993 Act No. 12, Section 1, eff March 23, 1993.

**SECTION 4‑9‑35.** County public library systems; boards of trustees.

 (A) Each county council shall prior to July 1, 1979, by ordinance establish within the county a county public library system, which ordinance shall be consistent with the provisions of this section; provided, however, notwithstanding any other provision of this chapter, the governing body of any county may by ordinance provide for the composition, function, duties, responsibilities, and operation of the county library system. County library systems created by such ordinances shall be deemed a continuing function of county government and shall not be subject to the provisions of Section 4‑9‑50 except as state funds are specifically appropriated under other provisions of law.

 (B) Each county public library system shall be controlled and managed by a board of trustees consisting of not fewer than seven nor more than eleven members appointed by the county council (council) for terms of four years and until successors are appointed and qualify except that of those members initially appointed one‑half of such appointees less one shall be appointed for terms of two years only. Previous service on a county library board prior to the enactment of the county ordinance establishing the board shall not limit service on the board. Vacancies shall be filled in the manner of the original appointment for the unexpired term. To the extent feasible, members shall be appointed from all geographical areas of the county.

 (C) The board shall annually elect a chairman, vice‑chairman, secretary, treasurer and such other officers as it deems necessary. The board shall meet not less than four times each year and at other times as called by the chairman or upon the written request by a majority of the members.

HISTORY: 1978 Act No. 564 Section 2.

Attorney General’s Opinions

The Beaufort County Library Board of Trustees can hire and supervise the chief librarian without the advice and consent of the county administrator. S.C. Op.Atty.Gen. (August 22, 2014) 2014 WL 4382449.

The county administrator is not responsible for the administration of the library board of trustees. S.C. Op.Atty.Gen. (July 28, 2014) 2014 WL 3886690.

The Beaufort County Library Board of Trustees has the responsibility to report on any issue concerning the development of library services in the county, including but not limited to proposed contracts, acquisition or disposal of property, the annual budget, the report of operations and expenditures for the prior fiscal year, and the strategic plan. S.C. Op.Atty.Gen. (March 27, 2014) 2014 WL 1511518.

**SECTION 4‑9‑36.** Duties of boards of trustees.

 The board as provided for in Section 4‑9‑35 shall be authorized to exercise powers as to the policies of the county library which shall not be inconsistent with the general policies established by the governing body of the county, and pursuant to that authority shall be empowered to:

 (1) Employ a chief librarian whose qualifications and credentials shall meet the certification requirements of the State Library Board, and who shall be responsible to the county library board for the administration of the program and the selection of library staff members required to carry out the functions of the library system.

 (2) Purchase, lease, hold and dispose of real and personal property in the name of the county for the exclusive use of the county public library system. Provided, however, any such conveyance, lease or purchase of real property shall be by the county governing body in accordance with the provisions of Sections 4‑9‑10 et seq. and Sections 5‑1‑10 et seq., as amended.

 (3) Acquire books and other library materials and provide for use thereof throughout the county.

 (4) Accept donations of real property, services, books and other items suitable for use in the library system.

 (5) Designate or mark equipment, rooms and buildings, and other library facilities to commemorate and identify gifts and donations made to the library system.

 (6) Cooperate or enter into contracts or agreements with any public or private agency which results in improved services or the receipt of financial aid in carrying out the functions of the library system. Provided, however, such contracts and agreements shall be subject to approval by the governing body of the county.

 (7) Enter into contracts or agreements with other counties to operate regional or joint libraries and related facilities. Provided, however, such contracts and agreements shall be subject to approval by the governing body of the county.

 (8) Receive and expend grants, appropriations, gifts and donations from any private or public source for the operation, expansion or improvement of the library system.

 (9) Take any actions deemed necessary and proper by the board to establish, equip, operate and maintain an effective library system within limits of approved appropriations of county council.

HISTORY: 1978 Act No. 564 Section 2.

CROSS REFERENCES

The power of county government to purchase and sell property, see Sections 4‑9‑30 and 4‑9‑1030.

Attorney General’s Opinions

The Beaufort County Library Board of Trustees can hire and supervise the chief librarian without the advice and consent of the county administrator. S.C. Op.Atty.Gen. (August 22, 2014) 2014 WL 4382449.

Members of the Beaufort County Library Board of Trustees are officers for dual office holding purposes. S.C. Op.Atty.Gen. (August 22, 2014) 2014 WL 4382449.

The Beaufort County Library Board of Trustees has the responsibility to report on any issue concerning the development of library services in the county, including but not limited to proposed contracts, acquisition or disposal of property, the annual budget, the report of operations and expenditures for the prior fiscal year, and the strategic plan. S.C. Op.Atty.Gen. (March 27, 2014) 2014 WL 1511518.

**SECTION 4‑9‑37.** Additional duties of boards of trustees.

 In addition to the powers and duties prescribed in Section 4‑9‑36 the board shall:

 (a) Provide and make available to the residents of the county books and library materials and in the fulfillment of this function shall establish a headquarters library and may establish branches and subdivisions thereof in appropriate geographical areas of the county within the limits of available funds. The board may operate one or more bookmobiles over routes determined by the board.

 (b) Adopt regulations necessary to insure effective operation, maintenance and security of the property of the library system. Provided, however, such regulations shall not be in conflict with policy or regulations established by the county governing body.

 (c) Annually at a time designated by the county council submit to the council a budget for the ensuing fiscal year adequate to fund the operation and programs of the library system. Such budget shall list all funds which the board anticipates will be available for the operation of the library system. All funds appropriated, earned, granted or donated to the library system, including funds appropriated by the county council, shall be deposited and expended as provided for by the ordinance in each county establishing the library system. All funds appropriated, earned, granted or donated to the library system or any of its parts shall be used exclusively for library purposes. All financial procedures relating to the library system including audits shall conform to the procedures established by the county council.

 (d) Annually file a detailed report of its operations and expenditures for the previous fiscal year with the county council.

HISTORY: 1978 Act No. 564 Section 2.

CROSS REFERENCES

Public library trespass, warning, appeal, penalties, see Section 16‑11‑625.

Attorney General’s Opinions

Members of the Beaufort County Library Board of Trustees are officers for dual office holding purposes. S.C. Op.Atty.Gen. (August 22, 2014) 2014 WL 4382449.

The Beaufort County Library Board of Trustees has the responsibility to report on any issue concerning the development of library services in the county, including but not limited to proposed contracts, acquisition or disposal of property, the annual budget, the report of operations and expenditures for the prior fiscal year, and the strategic plan. S.C. Op.Atty.Gen. (March 27, 2014) 2014 WL 1511518.

**SECTION 4‑9‑38.** Status of donations for tax purposes; applicability of state laws.

 All county public library systems established pursuant to Section 4‑9‑35 are deemed to be educational agencies and gifts and donations of funds or property to such systems shall be deductible by the donors for tax purposes as provided by law for gifts and donations for tax purposes.

 All state laws and regulations relating to county public library systems shall apply to library systems created pursuant to Section 4‑9‑35.

 All employees of a county public library system shall be subject to the provisions of item (7) of Section 4‑9‑30.

HISTORY: 1978 Act No. 564 Section 2.

**SECTION 4‑9‑39.** Funding of systems; transfer of assets of former libraries.

 County public library systems shall be funded by annual appropriations by the county council including millage, if any, levied specifically for the county public library system plus aid provided by the state and federal governments and other sources. If any county council levies a tax specifically for the support of a county public library system, such tax shall apply to all persons and corporations subject to school taxes.

 All assets and property, both real and personal, owned by any county library prior to the creation of a library system under Section 4‑9‑35 shall be transferred to the county by the persons or entities owning title thereto provided, however, any decision to sell or otherwise transfer the property for use other than for library purposes must be made by two‑thirds majority of the county governing body.

HISTORY: 1978 Act No. 564 Section 2; 1994 Act No. 480, Section 1, eff July 14, 1994.

Effect of Amendment

The 1994 amendment, at the end of the second paragraph, deleted “; provided, however, that all such assets and property shall be used exclusively for library purposes.”

Attorney General’s Opinions

The Marion County Library Board of Trustees lacks authority to impose or increase property taxes for the benefit of the Marion County Library System and cannot legally sponsor a voter referendum for such an increase. S.C. Op.Atty.Gen. (May 6, 2011) 2011 WL 2214064.

Under settled rules of construction that an interpretation in favor of the constitutionality of the statute is required, it is thus the opinion of this office that Section 4‑9‑39 does not conflict with Article X, Section 3(g). The opinion is based upon the interpretation that the library tax does not apply to that property exempt by Article X, Section 3(g) of the South Carolina Constitution. An interpretation that would render such property subject to the library tax necessarily results in the statute’s being unconstitutional. 1981 Op Atty Gen, No 81‑63, p 89.

**SECTION 4‑9‑40.** Power of county to contract for services within municipalities.

 Any county may perform any of its functions, furnish any of its services within the corporate limits of any municipality, situated within the county, by contract with any individual, corporation or municipal governing body, subject always to the general law and the Constitution of this State regarding such matters. Provided, however, that where such service is being provided by the municipality or has been budgeted or funds have been applied for that such service may not be rendered without the permission of the municipal governing body.

HISTORY: 1962 Code Section 14‑3703.1; 1975 (59) 692.

CROSS REFERENCES

Constitutional authority for joint administration of functions and exercise of powers, see SC Const, Art 8, Section 13.

Municipal corporations generally, see Title 5.

Attorney General’s Opinions

A county or municipal law enforcement agency may, upon request, provide special police services in addition to those regularly provided to private business concerns, charge a fee, and utilize regular police equipment and personnel desiring to work overtime. 1978 Op Atty Gen, No 78‑39, p 63.

The “home rule” legislation is not retroactive so as to affect contracts entered into prior to the effective date of the legislation. 1975‑76 Op Atty Gen, No 4470, p 333.

**SECTION 4‑9‑41.** Joint administration of functions by county, incorporated municipality, special purpose district, or other political subdivision.

 (A) Any county, incorporated municipality, special purpose district, or other political subdivision may provide for the joint administration of any function and exercise of powers as authorized by Section 13 of Article VIII of the South Carolina Constitution.

 (B) The provisions of this section may not be construed in any manner to result in diminution or alteration of the political integrity of any of the participant subdivisions which agree to and become a part of the functional consolidation, nor may any constitutional office be abolished by it.

HISTORY: 1992 Act No. 319, Section 2, eff April 8, 1992.

Editor’s Note

1992 Act No. 319, Section 1 effective April 8, 1992, reads as follows:

“SECTION 1. It is the legislative intent and purpose of this chapter to provide a means for the consolidation of the governmental and corporate functions now vested in municipal corporations and other political subdivisions and with the governmental and corporate functions now vested in the counties in which these municipal corporations and other political subdivisions are located, and to provide a method for the creation of consolidated governments which may be used to fulfill the unique needs and demands in various county areas. This chapter is provided as enabling legislation to be liberally construed as a utilization of the constitutional power granted by Section 12 of Article VIII of the Constitution of South Carolina, 1895.”

CROSS REFERENCES

Consolidation of political subdivisions, see Section 4‑8‑10 et seq.

Constitutional authority for joint administration of functions and exercise of power, see Const. Art 8, Section 12; Chapter 8, Title 4.

LIBRARY REFERENCES

62 C.J.S., Municipal Corporations Sections 85‑87.

**SECTION 4‑9‑45.** Police jurisdiction of coastal counties.

 For the purpose of maintaining proper policing, to provide proper sanitation and to abate nuisances, the police jurisdiction and authority of any county bordering on the high tide line of the Atlantic Ocean is extended to include all that area lying between the high tide line and the low tide line not within the corporate limits of any municipality. Such area shall be subject to all the ordinances and regulations that may be applicable to the area lying within the boundary limits of the county, and the magistrates’ courts shall have jurisdiction to punish individuals violating the provisions of the county ordinances where such misdemeanor occurred in the area defined in this section.

HISTORY: 1980 Act No. 300, Section 3.

LIBRARY REFERENCES

20 C.J.S., Counties Section 49.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Nuisance Section 30, Power of County Governments to Abate Nuisances.

Attorney General’s Opinions

It is the legal responsibility of each coastal county to maintain and cleanup any debris in the tideland areas between mean high and low tide. S.C. Op.Atty.Gen. (January 31, 2017) 2017 WL 569547.

County possesses power to adopt ordinance providing criminal penalties for making excessive noise, and such ordinance does not violate State Constitution or Home Rule Act. S.C. Op.Atty.Gen. (September 24, 1985) 1985 WL 166075.

**SECTION 4‑9‑50.** Source of funds for use of county personnel, facilities, or equipment to implement general law.

 Whenever the General Assembly shall provide by general law for the use of county personnel, facilities or equipment to implement such general law or rules and regulations promulgated pursuant thereto, the State agency or department responsible for administering such general law shall provide sufficient funds for county implementation from appropriations to that agency of department; provided, that this section shall not apply to construction of or improvement to county capital improvements or other permanent facilities required by the provisions of the general law or regulations promulgated pursuant thereto.

HISTORY: 1962 Code Section 14‑3703.2; 1975 (59) 692.

**SECTION 4‑9‑55.** Enactment of general laws affecting counties’ expenditures and revenue raising; conditions; exceptions.

 (A) A county may not be bound by any general law requiring it to spend funds or to take an action requiring the expenditure of funds unless the General Assembly has determined that the law fulfills a state interest and the law requiring the expenditure is approved by two‑thirds of the members voting in each house of the General Assembly provided a simple majority of the members voting in each house is required if one of the following applies:

 (1) funds have been appropriated that have been estimated by the Revenue and Fiscal Affairs Office at the time of enactment to be sufficient to fund the expenditures;

 (2) the General Assembly authorizes or has authorized a county to enact a funding source not available for the county on July 1, 1993, that can be used to generate the amount of funds estimated to be sufficient to fund the expenditure by a simple majority vote of the governing body of the county;

 (3) the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments;

 (4) the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement.

 (B) Except upon approval of each house of the General Assembly by two‑thirds of the members voting in each house, the General Assembly may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that counties have to raise revenues in the aggregate, as the authority exists on July 1, 1993.

 (C) The provisions of this section do not apply to:

 (1) laws enacted to require funding of pension benefits existing on the effective date of this section;

 (2) laws relating to the judicial department;

 (3) criminal laws;

 (4) election laws;

 (5) the Department of Education;

 (6) laws reauthorizing but not expanding then‑existing statutory authority;

 (7) laws having a fiscal impact of less than ten cents per capita on a statewide basis; laws creating, modifying, or repealing noncriminal infractions.

 (D) The duties, requirements, and obligations imposed by general laws in effect on July 1, 1993, are not suspended by the provisions of this section.

 (E) A provision of, or amendment to, an appropriation bill that contains a permanent or temporary provision of law must be adopted by a separate vote of the General Assembly in the manner provided in subsections (A) through (D) of this section. Provided, however, that once a provision or amendment to an appropriation bill is adopted, the vote to adopt or reject an appropriation bill on second reading, third reading, or adoption of the conference committee or free conference committee report is not subject to the provisions of subsections (A) through (D) of this section.

HISTORY: 1993 Act No. 157, Section 1, eff June 15, 1993; 1997 Act No. 138, Section 1, eff July 1, 1997.

Code Commissioner’s Note

At the direction of the Code Commissioner, reference in (A)(1) to Division of Budget and Analyses, was changed to Revenue and Fiscal Affairs Office, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

Effect of Amendment

The 1997 amendment, in the introductory paragraph of subsection (A), substituted “A county may not” for “No county may”; in subsection (C), deleted former item (5), renumbered former item (6) as item (5), deleted former item (7), and renumbered former items (8) and (9) as items (6) and (7); and added subsection (E).

CROSS REFERENCES

Application of this section to enactment of general laws affecting municipalities, see Section 5‑7‑310.

LIBRARY REFERENCES

62 C.J.S., Municipal Corporations Section 183.

**SECTION 4‑9‑60.** Election or appointment, and terms, of county treasurer and auditor under certain forms of government; continuation of officials in office.

 Under the council, council‑supervisor and council‑administrator forms of government provided for in this chapter the county treasurer and the county auditor shall be elected. Officials serving unexpired terms when a form of government provided for in this chapter is adopted by a particular county shall continue to serve until successors are elected and qualify. Under the council‑manager form the county treasurer and county auditor shall serve out their unexpired terms but shall thereafter be elected or appointed as council shall by ordinance prescribe.

HISTORY: 1962 Code Section 14‑3703.3; 1975 (59) 692.

Attorney General’s Opinions

Discussion of whether the county auditor may present a case before the magistrate’s court as a representative of the county and whether that would constitute the unauthorized practice of law. S.C. Op.Atty.Gen. (March 26, 2013) 2013 WL 1695517.

If the Governor does not make an appointment to fill a vacancy in the office of county auditor, section 12‑39‑40 provides a mechanism by which a deputy auditor may fulfill the duties of the auditor until a successor is chosen. S.C. Op.Atty.Gen. (July 13, 2012) 2012 WL 3057449.

Section 7‑13‑190, though potentially useful as a model, does not provide a statutory minimum in terms of the time required to prepare for an election to fill a vacancy in the office of county auditor. Rather, if the Governor makes an appointment to fill such vacancy, a successor to the appointee must be selected at the next general election absent some circumstance making such an election a practical impossibility. S.C. Op.Atty.Gen. (July 13, 2012) 2012 WL 3057449.

Section 4‑9‑60 does not protect a treasurer‑ or auditor‑elect in the event a change to a council‑manager form of government with an ordinance providing for these offices to be filled by appointment is complete before he or she assumes office. S.C. Op.Atty.Gen. (May 25, 2012) 2012 WL 2056624.

Sections 4‑11‑20 and 1‑3‑220 should prevail over Sections 12‑45‑20 and 1‑3‑210 with respect to filling vacancy in office of county treasurer elected pursuant to Section 4‑9‑60. Gubernatorial appointee (appointed to fill vacancy occasioned by death two weeks prior to commencement of term of office) would serve until successor is elected in general election in November 1994 and successor so elected would serve the remainder of term for which treasurer was elected in November 1992. 1993 Op Atty Gen No. 93‑20.

Applying Circuit Court decision of Honorable James E. Moore and reasoning therein to situation in Darlington County mandates conclusion that Sections 4‑11‑20 and 1‑3‑220 should prevail over Sections 12‑39‑10 and 1‑3‑210 with respect to filling vacancy in office of county auditor elected pursuant to Section 4‑9‑60. Thus, interim gubernatorial appointee to office of county auditor would hold office until next general election, at which time successor would be elected to serve remainder of unexpired term. To extent this opinion is deemed inconsistent with other opinions of Attorney General’s office concerning selection of successor to elected auditor, this opinion will be controlling, as being in conformity with Judge Moore’s ruling. 1990 Op Atty Gen No. 90‑43.

A vacancy in the office of County Auditor is filled by appointment by the Governor for the remainder of the unexpired term and no Senate confirmation is necessary. 1978 Op Atty Gen, No 78‑53, p 80.

**SECTION 4‑9‑70.** Powers of county councils with regard to public school education; establishing school tax millage.

 The provisions of this chapter shall not be construed to devolve any additional powers upon county councils with regard to public school education, and all school districts, boards of trustees and county boards of education shall continue to perform their statutory functions in matters related thereto as prescribed in the general law of the State; provided, however, that except as otherwise provided for in this section the county council shall determine by ordinance the method of establishing the school tax millage except in those cases where boards of trustees of the districts or the county board of education established such millage at the time one of the alternate forms of government provided for in this chapter becomes effective. In counties containing more than one school district, where all such districts are located wholly within the boundaries of the county, council may by ordinance establish county‑wide school tax millage. Provided, further, that in any county where the General Assembly retained the authority to establish or limit the millage levied by school districts or levy a tax for educational purposes, on January 1, 1974, such authority shall continue in the General Assembly until such time as such authority may be transferred to the school district or the county governing body by act of the General Assembly. Provided, further, in any county where on January 1, 1975 the school district tax millage and budget was established in meetings or referendums of the qualified electors of the district at which meetings or referendums such electors changed, altered, rejected, or amended by voice vote or ballot the school budget and necessary tax millage to implement such budget as proposed by the district board of trustees, such procedures to establish the school tax millage shall continue unaffected or modified by the provisions of this section or any other provision of law in conflict with this proviso.

HISTORY: 1962 Code Section 14‑3704; 1975 (59) 692.

CROSS REFERENCES

County boards of education, see Sections 59‑15‑10 et seq.

Education, generally, see Title 59.

Attorney General’s Opinions

Discussion of whether this section removes County Council’s authority over the School District’s budget above setting the current millage rate. S.C. Op.Atty.Gen. (November 24, 2015) 2015 WL 8773706.

Under Act 257, Acts of 1979, General Assembly authorized Colleton County Council to levy school taxes for Colleton County School district. Under such authority, separate school millage results and such levy may be shown on tax notices to public as school tax levy. 1993 Op.Atty.Gen. No. 93‑38 (June 8, 1993) 1993 WL 720120.

State law does not appear to authorize school board to call for referendum concerning method of election of its members or to request county election commission to put such question on ballot of next general election. A court would likely conclude that such referendum would be of no effect. In any event, referendum could not be used to change law enacted by General Assembly absent express authorization from legislature. 1991 Op.Atty.Gen. No. 91‑12 p 46 (February 13, 1991) 1991 WL 474742.

A court would probably conclude that Richland County Council does possess certain limited investigative powers pursuant to its authority to levy taxes by setting the millage rate for School District One. 1986 Op.Atty.Gen. No. 86‑7, p. 32 (January 14, 1986) 1986 WL 191969.

The Calhoun County School District is free to spend any money received in 1983‑84 or carried over from the previous schoolyear. 1983 Op.Atty.Gen. No. 83‑61, p. 95 (August 18, 1983) 1983 WL 167255.

Richland County Council, pursuant to S.C. Code Ann. Section 4‑9‑70 (1976) may consider surplus or unappropriated school funds from prior fiscal years when establishing a school tax millage for Richland County School District No. 2. 1978 Op.Atty.Gen. No 78‑52, p 77 (March 17, 1978) 1978 WL 22534.

A County Council may not lend county funds to a school district within the county unless the school district is co‑extensive with the county. 1976‑77, Op.Atty.Gen. No 77‑226, p 173 (July 20, 1977) 1977 WL 24568.

The General Assembly will be the body authorized to levy a tax for educational purposes and to establish or limit the millage levied by school districts in Clarendon County for the fiscal year 1976‑1977 in the absence of an act transferring that power to the Clarendon County governing body or to the individual school districts in Clarendon County. 1974‑75 Op.Atty.Gen. No 4073, p 150 (August 5, 1975) 1975 WL 22370.

NOTES OF DECISIONS

In general 1

Validity 1⁄2

1⁄2. Validity

Authority of county board of education to review and approve school district budgets and to set tax millage rates for each school district did not violate provision of State Constitution guaranteeing uniform taxation within a jurisdiction; legislature envisioned that county board would set different millage rates for the individual school districts, such that school taxes fell within the “special levies” exception to the general rule requiring uniform taxation. Burriss v. Anderson County Bd. of Educ. (S.C. 2006) 369 S.C. 443, 633 S.E.2d 482, rehearing denied. Education 249; Education 286

1. In general

Section 59‑21‑1030 requires a school district to maintain at least the level of financial effort per pupil as in the prior year adjusted for an inflation factor. The taxing municipality is required to set millage so that the minimum effort per pupil is generated but does not have the authority to “cut back” the required local effort so as to equal only the minimum amount necessary, as this would have the effect of reading out the “at least” in the first sentence of the section. Richland County School Dist. One v. Richland County Council (S.C. 1992) 310 S.C. 106, 425 S.E.2d 747.

The only logical reading of the first two sentences of Section 59‑21‑1030 is that a school board shall set the rate at least as high as the minimum local effort, and the taxing municipality may adjust this rate only if it determines the rate is below the minimum required. Therefore, it may not unilaterally reduce the amount set by the school board to the minimum, as the clear meaning and purpose of the statute is to provide a minimum, not a maximum, financial effort by school districts. Accordingly, Section 59‑21‑1030 requires a taxing municipality to appropriate the projected EIA minimum local effort as submitted by a school district and reported by Department of Education. Richland County School Dist. One v. Richland County Council (S.C. 1992) 310 S.C. 106, 425 S.E.2d 747.

Under Section 4‑29‑67(C), fees‑in‑lieu are to be treated in the same manner as property taxes, and are to be distributed among school district and other purposes in proportion to their respective property tax millage. Respective shares of the fees‑in‑lieu of taxes cannot be determined until after the millage is determined. Only after the respective millage rates are established for each county entity entitled to a portion of the fee‑in‑lieu of taxes can the apportionment of this fee be determined. Section 4‑29‑67(C) requires that the fee be apportioned according to the percentage each participating entity’s millage bears to the sum of all participating entities millages. Richland County School Dist. One v. Richland County Council (S.C. 1992) 310 S.C. 106, 425 S.E.2d 747. Education 219

An Act providing for the disbursement of federal funds to county school districts, and involving state control of public education, did not violate the Home Rule Act since public education is not the duty of the separate counties but of the General Assembly. Charleston County School Dist. v. Charleston County (S.C. 1989) 297 S.C. 300, 376 S.E.2d 778. Education 214

An exception under Section 4‑9‑70, which provides that “county counsel shall determine by ordinance the method of establishing the school tax millage except in those cases where boards of trustees of the districts or the county board of education established such millage at the time one of the alternate forms of government provided for in this chapter becomes effective,” would be invalid when applied to an appointed authority since it was inconceivable that the Legislature would not provide for the school tax levy merely because it could not constitutionally vest control of that power in appointed boards of education and, therefore, the legislative intent would be preserved by allowing a county counsel to prescribe the method of establishing school tax millage. Stone v. Traynham (S.C. 1982) 278 S.C. 407, 297 S.E.2d 420. Education 249

**SECTION 4‑9‑80.** Powers of county councils with regard to public service and special purpose districts, water and sewer authorities, and other political subdivisions; procedures upon dissolution of such districts.

 The provisions of this chapter shall not be construed to devolve any additional powers upon county councils with regard to public service districts, special purpose districts, water and sewer authorities, or other political subdivisions by whatever name designated, (which are in existence on the date one of the forms of government provided for in this chapter becomes effective in a particular county) and such political subdivisions shall continue to perform their statutory functions prescribed in laws creating such districts or authorities except as they may be modified by act of the General Assembly, and any such act which dissolves a district or absorbs its function entirely within the county government shall provide that such act shall be effective only upon approval of such abolition or absorption by favorable referendum vote of a majority of the qualified electors of the district voting in such referendum. Upon the dissolution of any district within a county and the assumption of its function by the county government, the county shall take title to the property of the district and assume all of its debts and obligations which shall be retired by charges or assessment of taxes in those areas of the county receiving benefits from the facilities of the district; provided, however, notwithstanding any other provision of law, when any county council under existing law is authorized to appoint members to the governing body of a public or special service district or a water resources commission within the county and such governing body by resolution directed to the council requests a change in the size or manner in which members of such governing body are selected, the council may by ordinance effect such changes and the council action shall have the full force and effect of law from the effective date of the ordinance.

HISTORY: 1962 Code Section 14‑3705; 1975 (59) 692; 1979 Act No. 135 Section 2.

CROSS REFERENCES

Authority and procedure for increasing size of governing body of district, see Section 4‑9‑81.

Procedure to abolish non‑functioning special purpose districts, see Section 4‑11‑290.

Public service and special purpose districts and other political subdivisions, generally, see Title 6.

Rules of ethical conduct contained in the Ethics, Government Accountability, and Campaign Reform Act of 1991, see Section 8‑13‑100 et seq.

Attorney General’s Opinions

There appears to be no provision in the Home Rule Act which would affect the taxing authority of watershed conservation districts created either before or after the advent of home rule. Taxation without representation may be found to exist if legislation which, if adopted, would mandate appointment rather than election of watershed conservation district directors. 1987 Op Atty Gen, No. 87‑48, p 128.

Greenville Airport Commission is not agency of either City or County of Greenville, but is most probably a special purpose district and separate political subdivision; neither City or County of Greenville may, by contract, ordinance, or agreement, alter appointment procedures for members of Greenville Airport Commission. 1985 Op Atty Gen, No. 85‑36, p 115.

Upon dissolution of Loris Community Hospital District, which may be accomplished pursuant to Section 4‑9‑80, title to property of District would pass to Horry County; assuming that constitutional provisions are followed, assets would be utilized for public purposes and would not inure to benefit of private persons, associations, corporations, or the like. 1985 Op Atty Gen, No. 85‑49, p 149.

Term “special purpose district” contained in Act No. 488 of 1984 is broad and open‑ended. There are many factors to be considered in determining whether entity is special purpose district under terms of Act No. 488; actual determination must be made on individual basis. 1984 Op Atty Gen, No. 84‑132, p. 310.

Any act which dissolves a special purpose district must provide for a referendum approving the abolition by a majority of the electors. [Note: see Section 4‑11‑290 for procedure to abolish a nonfunctioning special purpose district.] 1976‑77 Op Atty Gen, No 77‑62, p 61.

The appointment of a County Fire Marshal for Spartansburg County would have no effect on the internal operations or day‑to‑day business of the existing special purpose districts. 1994 Op Atty Gen, No. 94‑49, p. 112.

NOTES OF DECISIONS

In general 1

1. In general

A trial judge’s attempt to preserve budgetary oversight of a public service district by vesting this function in County Council under Section 4‑9‑80 violated that statute because under Section 4‑9‑80, Home Rule legislation cannot be construed to give county government more power over a pre‑Home Rule district than it is given in the original act creating such a district; therefore, although county government may exercise budgetary control over post‑Home Rule districts under Section 4‑9‑30(5), that power does not exist in relation to a public service district that predated Home Rule legislation. Thomas v. Cooper River Park (S.C. 1996) 322 S.C. 32, 471 S.E.2d 170. Counties 24

The General Assembly is not permitted under Section 4‑9‑80 to enact special legislation regarding special purpose districts. Spartanburg Sanitary Sewer Dist. v. City of Spartanburg (S.C. 1984) 283 S.C. 67, 321 S.E.2d 258. Statutes 1641

Special purpose district taxes are not necessarily county taxes, since, under Section 4‑9‑80, the existence of special purpose districts is protected, even under home rule, until they are dissolved by the General Assembly after a favorable referendum, and counties cannot abolish them, so that the existence of home rule would not require the Appellate Court to construe county taxes to include taxes of special purpose districts. Michelin Tire Corp. v. Spartanburg County Treasurer (S.C. 1984) 281 S.C. 31, 314 S.E.2d 8.

Under SC Const Art VIII, Section 7, and Sections 44‑55‑1410 and 4‑9‑80, counties lack the power to abolish special purpose districts existing prior to home rule, until the legislature passes a general law affecting the existence of those districts. Berry v. Weeks (S.C. 1983) 279 S.C. 543, 309 S.E.2d 744.

**SECTION 4‑9‑81.** Authority for increasing size of governing body of district; procedure.

 (A) The governing body of any special purpose or public service district, or water and sewer authority, which is elected may provide by resolution for an increase in the size of its governing body. The governing body may not reduce the number of members on its governing body which is serving on January 1, 1987.

 (B) The resolution is effective only after approval by a majority of the qualified electors in the district voting in a referendum.

 (C) The referendum may be called by resolution of the governing body of the district. The county election commission must call a referendum not later than ninety nor earlier than thirty days after district action.

 (D) Notice of the referendum must be published in a newspaper of general circulation in the district at least thirty days prior to the referendum.

 (E) If the results of the referendum are favorable, the governing body of the district shall call for a special election or an election to be conducted at the time of the general election to elect additional members of the governing body as provided in the resolution as authorized in subsection (A).

 (F) The terms of office of any additional members must be established by the governing body of the district so that they are staggered, if the terms of the existing members of the district are staggered. The terms of any members elected under the provisions of this section must be the same length as those members serving on the governing body at the time the election is held, except as provided in this section, in order to stagger the terms.

 (G) All costs associated with conducting the referendum or election, or both, provided for in this section must be borne by the affected district.

HISTORY: 1987 Act No. 28 Section 1, eff April 14, 1987.

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

**SECTION 4‑9‑82.** Transfer by hospital public service district of assets, properties and responsibilities for delivery of medical services.

 (A) The governing body of any hospital public service district is authorized to transfer its assets and properties for the delivery of medical services upon assumption by the transferee of the responsibilities of the district for the delivery of medical services as set forth in the legislation creating the hospital public service district.

 (B) The transfer is not completed until the question of the transfer has been submitted to and approved by a favorable referendum vote of a majority of the qualified electors of the district voting in the referendum. The referendum vote may be conducted either as a special referendum within the district for this specific purpose or at the same time as a general election.

 (C) Provided, however, that the requirements of subsection (B) do not apply to a transfer by a hospital public service district that owns or controls less than one hundred forty‑five licensed or otherwise authorized acute care hospital beds and is located entirely within a county with a population of less than forty thousand persons, and the:

 (1) transfer is to a not‑for‑profit entity whose governing board is appointed by the Governor, upon the recommendation of the legislative delegation from the county where the hospital public service district is located, and which otherwise is in compliance with subsection (A); or

 (2) transfer is to an entity created pursuant to the provisions of Chapter 31, Title 33, or the provisions of Chapter 35, Title 33, or the provisions of Articles 15 and 16, Chapter 7, Title 44, and whose governing board is appointed by the Governor, upon recommendation of the legislative delegation from the county where the hospital public service district is located; or

 (3) transfer is to another governmental entity.

 (D) Any hospital public service district which transfers its assets and properties as provided in this section may dissolve the hospital public service district upon the completion of the transfer and upon the assumption or other appropriate disposition by the transferee of all of the responsibilities and obligations of the hospital public service district.

 (E) If the hospital public service district transfers its assets to an entity outside of its geographic boundaries, then any proceeds from the transfer must be used solely for the provision of health care services in a manner consistent with the obligations and responsibilities of the transferring hospital public service district.

 (F) Notwithstanding any other provision of law, the provisions of this section do not apply to any transaction that includes the hospital public service district’s entry into a lease of any or all of its real property associated with the delivery of hospital services regardless of:

 (1) the length of the term of the real property lease; or

 (2) whether or not the transaction also includes the sale or lease of other assets of the district.

HISTORY: 1987 Act No. 93 Section 2, eff May 13, 1987; 1999 Act No. 94, Section 1, eff June 11, 1999; 2015 Act No. 14 (S.673), Sections 1, 2, eff May 7, 2015.

Editor’s Note

1987 Act No. 93, Section 1, provides as follows:

“The General Assembly finds that under certain circumstances public service districts created prior to March 7, 1973, which were created to provide clinical medical services could better accomplish their initial intended purpose and provide for a more complete utilization of services, assets, and properties of the district if they were authorized to transfer their assets and properties to another political subdivision or an appropriate health care provider located within the district. It is the purpose of this act to authorize the transfer of these assets and properties upon favorable referendum vote of a majority of the qualified electors of the district voting in the referendum. It is also the purpose of this act to authorize the public service district to dissolve upon completion of the transfer of its assets and properties.”

Effect of Amendment

The 1999 amendment added subsection identifiers, inserted “hospital” preceding “public service district” throughout the section, deleted “clinical” preceding “medical services” in two locations in the subsection (A), deleted a provision in subsection (A) regarding eligible transferees, moved a referendum provision to subsection (B), and added subsections (C) and (E).

2015 Act No. 14, Section 1, added (F).

2015 Act No. 14, Section 2, in (C), substituted “less than one hundred forty‑five” for “less than one hundred thirty”, and made nonsubstantive changes in (C)(2).

**SECTION 4‑9‑85.** Examination of financial impact on revenues of county where district is abolished; procedure for refunding taxes.

 Within sixty days after the abolishment of a special purpose district (district), the governing body of the county in which the district is located must commence an examination of the financial impact of the abolishment of the district on the revenues of the county. The governing body shall conduct at least two public meetings within the geographical boundaries of the territory formerly comprising the district. The governing body shall advertise in a newspaper of general circulation in the county ten days prior to each meeting. At the meetings the governing body may receive such information as it considers necessary. At the conclusion of the sixty‑day period, the county governing body of the county shall make a determination and formulation of the financial impact of the abolishment of the district including, but not limited to, a procedure for any refund of taxes that may have been legally levied and collected by the county for the district. The determination and formulation must be published by the governing body in a newspaper of general circulation in the county in which the special purpose district formerly was located. The county governing body shall take action by ordinance on the determination and formulation within thirty days after it has been published in the newspaper. Any resident of the area formerly comprising the district has standing to bring an action in a court of competent jurisdiction to enforce the provisions of this section.

HISTORY: 1983 Act No. 81.

**SECTION 4‑9‑90.** Election of council members; reapportionment of single‑member election districts; terms of office and vacancies; election at large of chairman; procedure for changing term of office; continuation in office after reapportionment.

 Council members must be elected from defined single‑member election districts unless otherwise determined under the provisions of subsection (a), (b), or (c) of Section 4‑9‑10 or under the provisions of any plan ordered by a court of competent jurisdiction prior to May 1, 1986. In the event the members of the governing body are required to be elected from defined single‑member election districts, they must be elected by the qualified electors of the district in which they reside. All districts must be reapportioned as to population by the county council within a reasonable time prior to the next scheduled general election which follows the adoption by the State of each federal decennial census. The population variance between defined election districts shall not exceed ten percent.

 Members of the governing body of the county shall be elected in the general election for terms of two years or four years as the General Assembly may determine for each county commencing on the second of January next following their election. Vacancies on the governing body shall be filled in the manner of original election for the unexpired terms in the next general election after the vacancy occurs or by special election if the vacancy occurs one hundred eighty days or more prior to the next general election.

 In those counties where the members are elected for four year terms, such terms shall be staggered. If necessary, in the initial election for members one‑half plus one of the members elected who receive the highest number of votes shall serve terms of four years and the remaining members elected shall initially serve terms of two years only. In those counties in which the chairman of the governing body was elected at large as a separate office prior to the adoption of one of the alternate forms of government provided for in this chapter, the chairman shall continue to be so elected.

 In any county in which terms of county council members are for two years only, the council may by ordinance change such terms to four‑year staggered terms but such ordinance shall not become effective until approved by a favorable vote of the qualified electors of the county voting in a referendum conducted for that purpose. In the event the referendum is conducted at the time of the general election in which council members are elected, and the vote is favorable on the ordinance, the terms of council members shall automatically be changed to four‑year terms except that of those elected in that general election one half plus one of such members who receive the highest vote shall serve four‑year terms and the remaining members elected shall serve terms of two years only.

 Any council member who is serving a four‑year term in a district that has been reapportioned and whose term does not expire until two years after reapportionment becomes effective shall be allowed to continue to serve the balance of his unexpired term representing the people in the new reapportioned district if he is an elector in such reapportioned district. In the event that two or more council members, because of reapportionment, become electors in the same district, an election shall then be required. Provided, however, that if any seat should become vacant after election districts have been reapportioned but prior to the expiration of the incumbent’s term of office due to death, resignation, removal, or any other cause, the resulting vacancy shall be filled under the new reapportionment plan in the manner provided by law for the district that has the same district number as the district from which the council member whose office is vacant was elected. For the purpose of this section, a council member will be deemed a resident of the district he represents as long as he resides in any part of the district as constituted at the time of his election.

HISTORY: 1962 Code Section 14‑3706; 1975 (59) 692; 1980 Act No. 300, Section 4; 1980 Act No. 487; 1982 Act No. 313, Sections 1, 2; 1986 Act No. 501, eff June 10, 1986.

Effect of Amendment

The 1986 amendment revised the first paragraph by making grammatical changes and by adding “or under the provisions of any plan ordered by a court of competent jurisdiction prior to May 1, 1986.”

CROSS REFERENCES

Filling of certain vacancies by appointment by Governor, see Sections 1‑3‑210, 1‑3‑220.

Filling of vacancies in county offices, see Section 4‑11‑20.

Filling of vacancies in office of municipal mayor or council, see Section 5‑7‑200.

Attorney General’s Opinions

Service as a council member for the Cherokee County Council and as a member of the Macedonia Fire District Board would violate the dual office holding prohibition of the South Carolina Constitution. S.C. Op.Atty.Gen. (May 6, 2016) 2016 WL 2933093.

A court would likely find that after the expiration of the Fairfield County Council seat, the incumbent Fairfield County Council member would hold over in a de facto capacity until a successor is duly elected and qualified. 2014 S.C. Op.Atty.Gen. (December 23, 2014) 2014 WL 7505271.

Discussion of the effect of reapportionment to the trustees of a school district. S.C. Op.Atty.Gen. (July 5, 2012) 2012 WL 2950118.

County council would not have statutory authority to limit service of county council members nor statutory authority to conduct recall referendum. Electorate, by initiative and referendum would have no greater power than council and thus, such an initiated ordinance would most probably be facially defective and invalid. County council presented with such an initiated ordinance would have no obligation to call for referendum. 1993 Op Atty Gen, No. 93‑45.

Member of county council who moves from district where he was elected, vacates or forfeits his office and would no longer be qualified to serve from that district. However, individual could continue to serve in de facto capacity until his successor has been selected and qualifies pursuant to Section 4‑9‑90, since he is available to serve and there are more than 180 days before next general election. 1993 Op Atty Gen, No. 93‑68.

Section 4‑9‑90 requires special election to be held when there are more than 180 days before next general election. 1993 Op Atty Gen, No. 93‑68.

Vacancy on Beaufort County Council occurring less than 180 days prior to next election would be filled in next general election. Governor is authorized to appoint person to fill unexpired term and office holder would serve until January 2 when newly elected office holder takes office. 1990 Op Atty Gen, No. 90‑41.

The commencement of the term of office for a county supervisor is January second next following his election. 1987 Op Atty Gen, No. 87‑27(1), p 82.

Richland County Council would have the responsibility to draw the single‑member district lines if the county desires to select its council members from single‑member districts. 1987 Op Atty Gen, No. 87‑68, p 169.

Municipalities should follow the reapportionment provisions of Section 4‑9‑90. 1983 Op Atty Gen, No. 83‑60, p. 94.

The chairman of the council/administrator form of county government may not be given additional duties which conflict with duties of other county officials. 1976‑77 Op Atty Gen, No 77‑50, p 51.

If Anderson County selects the council‑supervisor form of county government provided for in Article 3 of Act No. 283 of 1975 [Article 5 of Chapter 9 of Title 40 of the 1976 Code] the “home rule” legislation, the supervisor will serve as chairman of the council pursuant to Code 1962 Section 14‑3730 of that Act [Code 1976 Section 4‑9‑410] but will not be elected to that position by virtue of Code 1962 Section 14‑3706 of that Act [Code 1976 Section 4‑9‑90]. 1974‑75 Op Atty Gen, No 4167, p 228.

NOTES OF DECISIONS

In general 1

1. In general

Once a county council has enacted a valid reapportionment ordinance, it may not subsequently enact another such ordinance until after next regular apportionment period. Elliott v. Richland County (S.C. 1996) 322 S.C. 423, 472 S.E.2d 256, rehearing denied. Counties 38

Second ordinance designed to correct an error contained in prior reapportionment ordinance for county council was an amendatory ordinance rather than a new and comprehensive reapportionment ordinance, and thus second ordinance was not barred under statute preventing enactment of a second reapportionment ordinance until after next reapportionment period. Elliott v. Richland County (S.C. 1996) 322 S.C. 423, 472 S.E.2d 256, rehearing denied. Counties 38

Reapportionment ordinance that repealed all previous county council reapportionment ordinances and created entirely new electoral districts was a new ordinance and was thus invalid under statute preventing council from enacting a second reapportionment ordinance until after next regular apportionment period. Elliott v. Richland County (S.C. 1996) 322 S.C. 423, 472 S.E.2d 256, rehearing denied. Counties 38

**SECTION 4‑9‑100.** Council members shall not hold other offices; salaries and expenses of members.

 No member of council, including supervisors, shall hold any other office of honor or profit in government, except military commissions and commissions as notaries public, during his elected term. After adoption of a form of government as provided for in this chapter, council shall by ordinance prescribe the salary and compensation for its members. After the initial determination of salary, council may by ordinance adjust the salary but the ordinance changing the salary is not effective until the date of commencement of terms of at least two members of council elected at the next general election following the enactment of the ordinance affecting the salary changes at which time it will become effective for all members. A chairman of a county council who is assigned additional administrative duties may receive additional compensation as the council may provide. The additional compensation becomes effective with the passage of the ordinance increasing the compensation of the chairman. Members may also be reimbursed for actual expenses incurred in the conduct of their official duties. The restriction on salary changes does not apply to supervisors under the council‑supervisor form of government whose salaries may be increased during their terms of office but supervisors shall not vote on the question when it is considered by council.

HISTORY: 1962 Code Section 14‑3707; 1975 (59) 692; 1980 Act No. 300, Section 5; 1985 Act No. 114, Section 1.

LIBRARY REFERENCES

20 C.J.S., Counties Section 76.

67 C.J.S., Officers Sections 27‑33, 203.

Attorney General’s Opinions

Discussion of whether a current County Council Member may be employed by the same County, as Recycling Coordinator ‑ Solid Waste and Recycling, or if such employment would violate the dual office holding provisions or other South Carolina laws. S.C. Op.Atty.Gen. (June 14, 2016) 2016 WL 3545857.

It is contrary to the public policy of South Carolina for a county council to appoint its own member as administrator. S.C. Op.Atty.Gen. (September 11, 2011) 2011 WL 4592368.

County council may elect not to reimburse its members for travel expenses incurred in carrying out their duties or, in alternative, may place limit on amount to be appropriated for travel expenses. 1991 Op Atty Gen No 91‑39, p 101.

If county council elects to reimburse its members for travel expenses incurred in carrying out their duties, such reimbursements must be based on actual expenses incurred rather than a per diem or flat rate which would not take actual expenses into account. 1991 Op Atty Gen No 91‑39, p 101.

If no funds are appropriated for reimbursement for travel expenses for city council members expended in carrying out their duties as members of council, Art X, Section 8 of State Constitution would likely be violated if expenses were then reimbursed, in absence of supplemental appropriation or such a mandatory ordinance. 1991 Op Atty Gen No 91‑39, p 101.

The salary of a county supervisor may be increased during his term of office. 1987 Op Atty Gen, No. 87‑7, p 41.

Under the Home Rule Act, County councilmen may not be paid fixed amounts as expenses but are entitled to be reimbursed only for actual expenses incurred; an annual allowance of $1200.00 for each councilman is invalid. 1978 Op Atty Gen, No 78‑66, p 93.

Members of the Richland County Council may receive their compensation in annual or semi‑annual payments. 1976‑77 Op Atty Gen, No 77‑24, p 31.

After adoption of a form of government provided by the “Home Rule” legislation, the Abbeville County Council can initially set the salary of its members; however, if the County Council later changes the salary of its members, that change cannot become effective until after the next general election for County Council members when the terms of office of the members elected therein begin. 1976‑77 Op Atty Gen, No. 77‑225, p 173.

Under the “home rule” act, County Council members may be reimbursed only for actual expenses, no per diem being allowed. 1975‑76 Op Atty Gen, No 4545, p 414.

**SECTION 4‑9‑110.** Council shall select chairman and other officers; terms of office; appointment of clerk; frequency and conduct of meetings; minutes of proceedings.

 The council shall select one of its members as chairman, except where the chairman is elected as a separate office, one as vice‑chairman and such other officers as are deemed necessary for such terms as the council shall determine, unless otherwise provided for in the form of government adopted. The council shall appoint a clerk to record its proceedings and perform such additional duties as the council may prescribe. The council after public notice shall meet at least once each month but may meet more frequently in accordance with a schedule prescribed by the council and made public. All meetings shall be conducted in accordance with the general law of the State of South Carolina affecting meetings of public bodies. Special meetings may be called by the chairman or a majority of the members after twenty‑four hours’ notice.

 The council shall determine its own rules and order of business. It shall keep a journal in which shall be recorded the minutes of its proceedings which shall be open to public inspection.

HISTORY: 1962 Code Section 14‑3708; 1975 (59) 692.

Attorney General’s Opinions

1. Section 14‑3708 [1976 Code Section 4‑9‑110] changes the previous three‑day notice for a special meeting of the Charleston County Council to a 24‑hour notice provision; 2. Any non‑emergency ordinance can receive a valid reading at a properly noticed special Council meeting; 3. Under Section 14‑3712, [1976 Code Section 4‑9‑150] the burden is upon Charleston County to conduct an independent annual audit of any agency receiving funds from the County. 4. The Council may prohibit a council member from contracting with the County in a matter in which he has a substantial financial interest. 5. The advertisement and bid requirements of Section 14‑1196 will remain stable according to the language of 14‑3717 until January 1, 1980. 6. Section 14‑3709 [1976 Code Section 4‑9‑120], by imposing no publication requirement, effectively repeals the five‑day publication requirement of Section 14‑1168. 7. The County Council is free to select its chairman as it chooses under Section 14‑3708 [1976 Code Section 4‑9‑110]. 8. Normally, County Council may vote by proxy method, except when an emergency ordinance is enacted, since Section 14‑3710 [1976 Code Section 4‑9‑130] requires an affirmative vote of two‑thirds of the Council present. 1976‑77 Op Atty Gen, No 77‑88, p 81.

State law does not expressly require meetings of municipal or county governing bodies to be held within geographic confines of particular county or municipality. 1991 Op Atty Gen, No. 91‑24 p 73.

There appears to be no prohibition in Home Rule Act against County Council’s approving funding for additional deputy positions in supplemental appropriation, even though such positions were not funded by Council in adoption of its annual appropriation ordinance. 1985 Op Atty Gen, No. 85‑115, p 319.

Public notice as used in Section 4‑9‑110 is the same term as used in 30‑4‑80, and public notice requirements should follow the notice provisions of the Freedom of Information Act. 1983 Op Atty Gen, No. 83‑64, p. 102.

The chairman of the council/administrator form of county government may not be given additional duties which conflict with duties of other county officials. 1976‑77 Op Atty Gen, No 77‑50, p 51.

Under the council‑administrator form of government, the chairman is selected by the council and his salary is set by the council. 1976‑77 Op Atty Gen, No 77‑97, p 86.

A member of County Council may withdraw an oral resignation if it has not been accepted by a majority of members present when a quorum exists. 1975‑76 Op Atty Gen, No 4353, p 183.

**SECTION 4‑9‑120.** Procedures for adoption of ordinances; proceedings and all ordinances shall be recorded.

 The council shall take legislative action by ordinance which may be introduced by any member. With the exception of emergency ordinances, all ordinances shall be read at three public meetings of council on three separate days with an interval of not less than seven days between the second and third readings. All proceedings of council shall be recorded and all ordinances adopted by council shall be compiled, indexed, codified, published by title and made available to public inspection at the office of the clerk of council. The clerk of council shall maintain a permanent record of all ordinances adopted and shall furnish a copy of such record to the clerk of court for filing in that office.

HISTORY: 1962 Code Section 14‑3709; 1975 (59) 692.

Attorney General’s Opinions

A public official who spends public money in excess of the appropriated amount acts unlawfully. S.C. Op.Atty.Gen. (July 5, 2016) 2016 WL 3946153.

1. Section 14‑3708 [1976 Code Section 4‑9‑110] changes the previous three‑day notice for a special meeting of the Charleston County Council to a 24‑hour notice provision; 2. Any non‑emergency ordinance can receive a valid reading at a properly noticed special Council meeting; 3. Under Section 14‑3712, [1976 Code Section 4‑9‑1] the burden is upon Charleston County to conduct an independent annual audit of any agency receiving funds from the County. 4. The Council may prohibit a council member from contracting with the County in a matter in which he has a substantial financial interest. 5. The advertisement and bid requirements of Section 14‑1196 will remain stable according to the language of 14‑3717 until January 1, 1980. 6. Section 14‑3709 [1976 Code Section 4‑9‑120], by imposing no publication requirement, effectively repeals the five‑day publication requirement of Section 14‑1168. 7. The County Council is free to select its chairman as it chooses under Section 14‑3708 [1976 Code Section 4‑9‑110]. 8. Normally, County Council may vote by proxy method, except when an emergency ordinance is enacted, since Section 14‑3710 [1976 Code Section 4‑9‑130] requires an affirmative vote of two‑thirds of the Council present. 1976‑77 Op Atty Gen, No 77‑88, p 81.

Under the Home Rule Act, a County Council must comply with the requirements of 1962 Code Section 14‑3709 [1976 Code Section 4‑9‑120] in passing temporary as well as permanent ordinances. 1975‑76 Op Atty Gen, No 4410, p 258.

NOTES OF DECISIONS

In general 1

1. In general

Although the better practice might have been for the title to be in writing at the time of the first reading, this alone did not cause enactment of a $25.00 road maintenance fee ordinance to be invalid; minutes of the first meeting wherein the road maintenance fee was suggested revealed that county council discussed the proposed ordinance at length and that all members were well aware of the nature and reason for the road maintenance fee, and nothing in the State Constitution, which authorized and established home rule, required that an ordinance be in written form when it received first reading. McSherry v. Spartanburg County Council (S.C. 2007) 371 S.C. 586, 641 S.E.2d 431. Counties 55

Section 4‑9‑120 does not require county counsel to make specific findings that amendment of ordinance is in public interest. Smith v. Georgetown County Council (S.C.App. 1987) 292 S.C. 235, 355 S.E.2d 864.

**SECTION 4‑9‑130.** Public hearings on notice must be held in certain instances; adoption of standard codes or technical regulations and furnishing copies thereof; emergency ordinances.

 Public hearings, after reasonable public notice, must be held before final council action is taken to:

 (1) adopt annual operational and capital budgets;

 (2) make appropriations, including supplemental appropriations;

 (3) adopt building, housing, electrical, plumbing, gas and all other regulatory codes involving penalties;

 (4) adopt zoning and subdivision regulations;

 (5) levy taxes;

 (6) sell, lease or contract to sell or lease real property owned by the county.

 The council may adopt any standard code or technical regulations authorized under Section 6‑9‑60 by reference thereto in the adopting ordinance. The procedure and requirements governing the ordinances shall be as prescribed for ordinances listed in (1) through (6) above.

 Copies of any adopted code of technical regulations shall be made available by the clerk of council for distribution or for purchase at a reasonable price.

 Not less than fifteen days’ notice of the time and place of such hearings shall be published in at least one newspaper of general circulation in the county.

 To meet public emergencies affecting life, health, safety or the property of the people, council may adopt emergency ordinances; but such ordinances shall not levy taxes, grant, renew or extend a franchise or impose or change a service rate. Every emergency ordinance shall be designated as such and shall contain a declaration that an emergency exists and describe the emergency. Every emergency ordinance shall be enacted by the affirmative vote of at least two‑thirds of the members of council present. An emergency ordinance is effective immediately upon its enactment without regard to any reading, public hearing, publication requirements, or public notice requirements. Emergency ordinances shall expire automatically as of the sixty‑first day following the date of enactment.

HISTORY: 1962 Code Section 14‑3710; 1975 (59) 692; 1982 Act No. 351, Section 1.

CROSS REFERENCES

Charges for legal advertisements in newspapers, see Sections 15‑29‑80 et seq.

Attorney General’s Opinions

A public hearing to discuss adopting an ordinance to sell, lease, or contract to sell or lease real property owned by the county is mandatory and interpretation as to the application of a tax is at the discretion of the courts. S.C. Op.Atty.Gen. (September 1, 2016) 2016 WL 4917034.

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

1. Section 14‑3708 [1976 Code Section 4‑9‑110] changes the previous three‑day notice for a special meeting of the Charleston County Council to a 24‑hour notice provision; 2. Any non‑emergency ordinance can receive a valid reading at a properly noticed special Council meeting; 3. Under Section 14‑3712, [1976 Code Section 4‑9‑1] the burden is upon Charleston County to conduct an independent annual audit of any agency receiving funds from the County. 4. The Council may prohibit a council member from contracting with the County in a matter in which he has a substantial financial interest. 5. The advertisement and bid requirements of Section 14‑1196 will remain stable according to the language of 14‑3717 until January 1, 1980. 6. Section 14‑3709 [1976 Code Section 4‑9‑120], by imposing no publication requirement, effectively repeals the five‑day publication requirement of Section 14‑1168. 7. The County Council is free to select its chairman as it chooses under Section 14‑3708 [1976 Code Section 4‑9‑110]. 8. Normally, County Council may vote by proxy method, except when an emergency ordinance is enacted, since Section 14‑3710 [1976 Code Section 4‑9‑130] requires an affirmative vote of two‑thirds of the Council present. 1976‑77 Op Atty Gen, No 77‑88, p 81.

Where real property is to be sold or leased, or a contract to sell or lease such real property is contemplated by the Board, Section 4‑9‑130, concerning notice and public hearing requirements, must be followed by County Council. 1986 Op Atty Gen, No. 86‑78, p 245.

There appears to be no prohibition in Home Rule Act against County Council’s approving funding for additional deputy positions in supplemental appropriation, even though such positions were not funded by Council in adoption of its annual appropriation ordinance. 1985 Op Atty Gen, No. 85‑115, p 319.

Under the “home rule” legislation, the intent of notice requirement for public hearings is that notice be given before each hearing is held, a transfer of county funds from one department to another would not require holding a public hearing before final Council action is taken. 1975‑76 Op Atty Gen, No 4411, p 259.

NOTES OF DECISIONS

In general 1

1. In general

A public hearing was not required before a county could enter into a contract for the construction and operation of a solid waste disposal facility where the property on which the facility would be located was merely operated by the county by virtue of a leasehold from a third party and thus was privately owned, not a lease of county‑owned real property. Citizens for Lee County, Inc. v. Lee County (S.C. 1992) 308 S.C. 23, 416 S.E.2d 641, rehearing denied.

Fact that county passed motion to place property for sale at public auction was not decision to sell within meaning of deed clause that grantor of land to county would have right to repurchase property in event county decided to sell said premises where council retained right to reject all bids and withdrew plans to place property for auction when it became aware of option, and where county had not held public hearing as required by Section 4‑9‑130. Amick v. Richland County (S.C. 1979) 273 S.C. 300, 255 S.E.2d 855. Municipal Corporations 225(1)

**SECTION 4‑9‑140.** Designation of fiscal and budget years; annual fiscal reports; adoption of budgets; levying and collection of taxes; supplemental appropriations; obtaining reports, estimates, and statistics.

 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.

 Council may make supplemental appropriations which shall specify the source of funds for such appropriations. The procedure for approval of supplemental appropriations shall be the same as that prescribed for enactment of ordinances.

 For the purposes of this section a supplemental appropriation shall be defined as an appropriation of additional funds which have come available during the fiscal year and which have not been previously obligated by the current operating or capital budget. The provisions of this section shall not be construed to prohibit the transfer of funds appropriated in the annual budget for purposes other than as specified in such annual budget when such transfers are approved by the council.

 In the preparation of annual budgets or supplemental appropriations, council may require such reports, estimates and statistics from any county agency or department as may be necessary to perform its duties as the responsible fiscal body of the county.

HISTORY: 1962 Code Section 14‑3711; 1975 (59) 692; 1977 Act No. 56.

CROSS REFERENCES

Requirement for referendum to create county police department not to limit authority of county council to adopt capital and operating budgets for the operation of the county, see Section 4‑9‑33.

Attorney General’s Opinions

Taxes collected for specific public purposes cannot be diverted to fund unbudgeted expenses unless purpose for which tax was levied is first satisfied. 1991 Op Atty Gen, No. 91‑21 p 68.

All appropriations by a county must be reflected in its budget adopted pursuant to section 4‑9‑140. A county is without authority to create or designate an independent entity to be a millage agency, such term being construed to mean the authority to levy taxes. If funds are to be provided such an agency, the same must be for a public purpose and must be set forth in the county’s budget. 1988 Op Atty Gen, No. 88‑79, p 224.

County cannot decrease its funding to salary of County Auditor and County Treasurer by reason of amount of state funding for those officers. 1985 Op Atty Gen, No. 85‑113, p 315.

There appears to be no prohibition in Home Rule Act against County Council’s approving funding for additional deputy positions in supplemental appropriation, even though such positions were not funded by Council in adoption of its annual appropriation ordinance. 1985 Op Atty Gen, No. 85‑115, p 319.

A county governing body cannot alter duties of County Treasurer. Any duplication of duties by Treasurer and Finance Department may be eliminated by providing that Treasurer’s office perform such duties. Duties assigned to Treasurer cannot be removed from that office. 1984 Op Atty Gen, No. 84‑15, p. 47.

Expenses, such as salaries paid to county employees, incurred by county during one fiscal year, may be paid only from funds appropriated for that particular year. 1984 Op Atty Gen, No. 84‑48, p. 118.

Contracts executed by County Councils and county agencies for terms in excess of one year are binding; however, the contract should contain a provision subjecting it to cancellation if funds are not available in succeeding years. 1983 Op Atty Gen, No. 83‑89, p. 147.

NOTES OF DECISIONS

In general 1

1. In general

A business license tax ordinance was not invalid on the ground that S.C. Const Art X Section 7(b) and Section 4‑9‑140 together require the adoption of a budget based on existing or concurrently levied tax revenue where the ordinance was enacted 6 months after the adoption of a budget providing for its revenue and created a $500,000 budget surplus; this argument cannot form the basis of a challenge to the tax ordinance, but rather would be the basis for a challenge to the budget. Business License Opposition Committee v. Sumter County (S.C. 1991) 304 S.C. 232, 403 S.E.2d 638.

**SECTION 4‑9‑145.** Litter control officers; custodial arrest authority; number of officers; powers and duties.

 (A) Except as provided in subsection (B), the governing body of a county may appoint and commission as many code enforcement officers as may be necessary for the proper security, general welfare, and convenience of the county. These officers are vested with all the powers and duties conferred by law upon constables in addition to duties imposed upon them by the governing body of the county. However, no code enforcement officer commissioned under this section may perform a custodial arrest, except as provided in subsection (B). These code enforcement officers must exercise their powers on all private and public property within the county. The governing body of the county may limit the scope of a code enforcement officer’s authority or the geographic area for which he is authorized to exercise the authority granted.

 (B)(1) The number of litter control officers vested with custodial arrest authority who are appointed and commissioned pursuant to subsection (A) must not exceed the greater of:

 (a) the number of officers appointed and commissioned by the county on July 1, 2001; or

 (b) one officer for every twenty‑five thousand persons in the county, based upon the 2000 census. Each county may appoint and commission at least one officer, without regard to the population of the county.

 (2)(a) A litter control officer appointed and commissioned pursuant to subsection (A) may exercise the power of arrest with respect to his primary duties of enforcement of litter control laws and ordinances and other state and local laws and ordinances as may arise incidental to the enforcement of his primary duties only if the officer has been certified as a law enforcement officer pursuant to Article 9, Chapter 6, Title 23.

 (b) In the absence of an arrest for a violation of the litter control laws and ordinances, a litter control officer authorized to exercise the power of arrest pursuant to subitem (a) may not stop a person or make an incidental arrest of a person for a violation of other state and local laws and ordinances.

 (3) For purposes of this section, the phrase “litter control officer” means a code enforcement officer authorized to enforce litter control laws and ordinances.

HISTORY: 1990 Act No. 598, Section 3, eff June 25, 1990; 1992 Act No. 411, Section 1, eff June 1, 1992; 1996 Act No. 373, Section 1, eff May 29, 1996; 2001 Act No. 109, Section 1, eff October 4, 2001.

Effect of Amendment

The 1992 amendment deleted language at the end of the second sentence relative to noninterference with the sheriff’s department, added the third sentence, and inserted “code” preceding “enforcement officers” in two places.

The 1996 amendment added the last sentence beginning “The governing body of the county.”

The 2001 amendment designated the former section as subsection (A), inserted references to subsection (B), and made language changes; and added subsection (B).

CROSS REFERENCES

Authorization for court enforcement officers to use an ordinance summons, see Section 56‑7‑80.

Requirement for referendum to create county police department not to limit authority of county council to appoint litter control, animal control, or code enforcement officers, see Section 4‑9‑33.

Attorney General’s Opinions

Counties are precluded from delegating their authority to enforce ordinances to an individual or private entity, such as a homeowner’s association. S.C. Op.Atty.Gen. (August 4, 2010) 2010 WL 3505050.

Appointment of special constable pursuant to Section 4‑9‑145 to provide supplemental law enforcement for municipality could constitute conflict with Section 4‑9‑30 inasmuch as it could be duplicative of duties and functions already performed by sheriff. Also, such might possibly be considered restructuring or reorganization of sheriff’s department, therefore such appointment would not be authorized absent compliance with referendum requirements of Section 4‑9‑30. 1991 Op Atty Gen, No 91‑56, p 142.

Security officers appointed by authority of Section 4‑9‑145 are eligible to exclude $5.00 per duty day from their South Carolina personal income tax return for subsistence allowance pursuant to Sections 23‑1‑30 and 23‑1‑400. 1991 Op Atty Gen, No. 91‑22 p 71.

County code enforcement officers commissioned pursuant to Section 4‑9‑145 may use blue lights on their county vehicles when performing law enforcement duties. 1993 Op Atty Gen No. 93‑58.

County code enforcement officers commissioned pursuant to Section 4‑9‑145 may use blue lights on their county vehicles when performing law enforcement duties. 1993 Op Atty Gen No. 93‑58.

**SECTION 4‑9‑150.** Audits of county records; designation of auditors; public inspection of report.

 The council shall provide for an independent annual audit of all financial records and transactions of the county and any agency funded in whole by county funds and may provide for more frequent audits as it considers necessary. Special audits may be provided for any agency receiving county funds as the county governing body considers necessary. The audits must be made by a certified public accountant or public accountant or firm of these accountants who have no personal interest, direct or indirect, in the fiscal affairs of the county government or any of its officers. The council may, without requiring competitive bids, designate the accountant or firm annually or for a period not exceeding three years. The designation for any particular fiscal year must be made no later than thirty days after the beginning of the fiscal year. The report of the audit must be made available for public inspection. A copy of the report of the audit must be submitted to the Comptroller General no later than January first each year following the close of the books of the previous fiscal year.

 If the report is not timely filed, or within the time extended for filing the report, funds distributed by the Comptroller General to the county in the current fiscal year must be withheld pending receipt of a copy of the report.

HISTORY: 1962 Code Section 14‑3712; 1975 (59) 692; 1977 Act No. 96; 1988 Act No. 365, Part II, Section 3, eff July 1, 1988; 2002 Act No. 356, Section 1, Pt XI.P, eff July 1, 2002; 2005 Act No. 164, Section 36, eff June 10, 2005.

Editor’s Note

1988 Act No. 365, Part II, Section 1, provides as follows:

“The General Assembly finds that numerous changes have been made at the local levels of government in South Carolina since the early part of this century. New laws have been enacted, technological progress has been made, and the art of accounting has changed, all of which have impacted upon the reporting requirements of the local governments as well as the State. Many of the laws pertaining to property tax and local financial reporting procedures existing prior to Home Rule have become archaic, irrelevant, and cumbersome since their enactment early in this century. Many of these laws now foster inefficiency, duplication of effort, and a waste of resources. The purpose of this part is to amend and repeal those statutes as necessary in order to eliminate unnecessary procedures and reports, to eliminate waste associated with the duplication of effort, and to provide for more pertinent data from those reports found to be necessary.”

Effect of Amendment

The 1988 amendment made grammatical changes, and added the last sentence, relating to a copy of the report of audit being submitted to the Comptroller General.

The 2002 amendment added the second undesignated paragraph relating to failure to file the report on time.

The 2005 amendment, in the first undesignated paragraph, at the end of the fourth sentence substituted “three years” for “one year”.

CROSS REFERENCES

Annual independent audit required by this section to include audit of uniform ordinance summons, see Section 56‑7‑80.

Audit of funds from drug forfeitures, see Section 44‑53‑530.

Audit of ordinance summonses, see Section 56‑7‑80.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Reference Section 8, Master‑In‑Equity.

Attorney General’s Opinions

1. Section 14‑3708 [1976 Code Section 4‑9‑110] changes the previous three‑day notice for a special meeting of the Charleston County Council to a 24‑hour notice provision; 2. Any non‑emergency ordinance can receive a valid reading at a properly noticed special Council meeting; 3. Under Section 14‑3712, [1976 Code Section 4‑9‑150] the burden is upon Charleston County to conduct an independent annual audit of any agency receiving funds from the County. 4. The Council may prohibit a council member from contracting with the County in a matter in which he has a substantial financial interest. 5. The advertisement and bid requirements of Section 14‑1196 will remain stable according to the language of 14‑3717 until January 1, 1980. 6. Section 14‑3709 [1976 Code Section 4‑9‑120], by imposing no publication requirement, effectively repeals the five‑day publication requirement of Section 14‑1168. 7. The County Council is free to select its chairman as it chooses under Section 14‑3708 [1976 Code Section 4‑9‑110]. 8. Normally, County Council may vote by proxy method, except when an emergency ordinance is enacted, since Section 14‑3710 [1976 Code Section 4‑9‑130] requires an affirmative vote of two‑thirds of the Council present. 1976‑77 Op Atty Gen, No 77‑88, p 81.

(1) Section 14‑3712, [1976 Code Section 4‑9‑150] 1962 Code, requires a complete audit of an agency funded in whole or in part by county funds. 1976‑77 Op Atty Gen, No 77‑141, p 116.

NOTES OF DECISIONS

In general 1

1. In general

South Carolina Judicial Department (SCJD) did not have a duty to supervise a Master‑In‑Equity’s bank accounts and his audit books in action by lenders who lost foreclosure proceeds due to embezzlement by Master’s employee; statute governing Chief Justice’s authority to examine administrative methods of employees nor statute governing authority of Judicial Council imposed such a duty, and duty was imposed by statute upon county. Bank of New York v. Sumter County (S.C. 2010) 387 S.C. 147, 691 S.E.2d 473. Equity 397

County council provided sufficient justification for its decision to require special audit of county clerk of court’s office pursuant to state statute allowing a county governing body to require, as it considers necessary, a special audit of any agency receiving county funds, though council did not specifically articulate why special audit was necessary; county council’s resolution approving of special audit clearly outlined that council had previously made requests for clerk to provide financial information including documentation in support of certain financial transactions, that clerk had refused to provide requested documentation, that funds involved were public funds, and that council felt most appropriate method of ensuring proper use of public funds was to request special audit of clerk’s office. Brown v. County of Berkeley (S.C. 2005) 366 S.C. 354, 622 S.E.2d 533. Counties 94(4); Public Employment 864

**SECTION 4‑9‑155.** Repealed by 1994 Act No. 516, Section 36, eff August 31, 1994.

Editor’s Note

Former Section 4‑9‑155 was entitled “Audit standards; penalties” and was derived from 1990 Act No. 603, Section 2; 1992 Act No. 361, Section 1; 1993 Act No. 181, Section 53; 1993 Act No. 115, Section 1.

1990 Act No. 603, Section 1, eff July 1, 1991, provides as follows:

“SECTION 1. The General Assembly finds that there is a lack of uniformity in the annual audits of the offices of the county assessor, auditor, treasurer, and tax collector and that on occasion important facts are overlooked or not considered. The purpose of this act is to establish the minimum standard of accounting to be followed so as to increase the accuracy of the audits of these offices.”

**SECTION 4‑9‑160.** Council shall provide for centralized purchasing system.

 The council shall provide for a centralized purchasing system for procurement of goods and services required by the county government.

HISTORY: 1962 Code Section 14‑3713; 1975 (59) 692.

CROSS REFERENCES

Requirement that a competitive procurement process be used, see Section 11‑35‑50.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mental Health Section 8, Powers and Duties of Mental Health Commission.

Attorney General’s Opinions

A county governing body cannot alter duties of County Treasurer. Any duplication of duties by Treasurer and Finance Department may be eliminated by providing that Treasurer’s office perform such duties. Duties assigned to Treasurer cannot be removed from that office. 1984 Op Atty Gen, No. 84‑15, p. 47.

The home‑rule act contemplates that the method used to achieve centralization of purchasing may vary from county to county. 1974‑75 Op Atty Gen, No 4198, p 246.

NOTES OF DECISIONS

In general 1

1. In general

The requirement that a competitive procurement process be used is for the benefit of those having a direct, intrinsic interest in the procurement practices of governmental entities. No implied right of private action accrues to the general public under Section 11‑35‑50. Citizens for Lee County, Inc. v. Lee County (S.C. 1992) 308 S.C. 23, 416 S.E.2d 641, rehearing denied.

**SECTION 4‑9‑170.** Council shall provide for appointment of certain boards, committees, and commissions; appointive powers of council.

 The council shall provide by ordinance for the appointment of all county boards, committees and commissions whose appointment is not provided for by the general law or the Constitution. Each council shall have such appointive powers with regard to existing boards and commissions as may be authorized by the General Assembly except as otherwise provided for by the general law and the Constitution, but this authority shall not extend to school districts, special purpose districts or other political subdivisions created by the General Assembly; provided, however, that beginning January 1, 1980, the council shall provide by ordinance for the appointment of all county boards, committees and commissions whose appointment is not provided for by the general law or the Constitution, but this authority shall not extend to school districts, special purpose districts or other political subdivisions created by the General Assembly.

HISTORY: 1962 Code Section 14‑3714; 1975 (59) 692.

Attorney General’s Opinions

Greenville Airport Commission is not agency of either City or County of Greenville, but is most probably a special purpose district and separate political subdivision; neither City or County of Greenville may, by contract, ordinance, or agreement, alter appointment procedures for members of Greenville Airport Commission. 1985 Op Atty Gen, No. 85‑36, p 115.

Section 14‑3714 [1976 Code Section 4‑9‑170] provides that county councils shall have such appointive powers as authorized by the General Assembly as to existing county boards and commissions; otherwise, the appointive powers are to remain as they have until January 1, 1980. 1976‑77 Op Atty Gen, No 77‑28, p 33.

Act No. 27 of 1975 [Local law] authorizes the Florence County Council to exercise, as of July 1, 1975, recommendation and appointive powers as to county boards and commissions whose appointments are not otherwise provided for by general laws for the Constitution and represents legislation of the type contemplated by Code 1976 Section 4‑9‑170. Op Atty Gen, No 4087, p 166.

NOTES OF DECISIONS

In general 1

1. In general

In order to provide for an orderly transition to county home rule, the legislature may properly exercise its authority under Code 1962 Section 14‑3714 [Code 1976 Section 14‑9‑170] to appoint until January 1, 1980, all county boards, committees, and commissioners. Duncan v. York County (S.C. 1976) 267 S.C. 327, 228 S.E.2d 92.

**SECTION 4‑9‑175.** Per diem, travel, and other expenses authorized for travel by board or commission members outside county.

 The governing body of a county may pay per diem, travel, or any other expenses, in an amount it considers necessary, to any member of a county board or commission when the member travels outside of the county and incurs expenses relating to his duties while serving on the board.

HISTORY: 1993 Act No. 147, Section 1, eff June 14, 1993.

LIBRARY REFERENCES

67 C.J.S., Officers Sections 224, 225.

**SECTION 4‑9‑180.** Officers and employees shall disclose personal interests in county business and refrain from voting on or participating in such matters.

 Any county officer or employee who has a substantial financial interest in any business which contracts with the county for sale or lease of land, materials, supplies, equipment or services or who personally engages in such matters shall make known that interest and refrain from voting upon or otherwise participating in his capacity as a county officer or employee in matters related thereto.

 Any county officer or employee who wilfully violates the requirements of this section shall be deemed guilty of malfeasance in office and upon conviction shall forfeit his office or position. Violation of this section with the knowledge express or implied of the person or corporation contracting with or making a sale to the county shall render the contract or sale voidable by the county governing body.

HISTORY: 1962 Code Section 14‑3715; 1975 (59) 692.

LIBRARY REFERENCES

67 C.J.S., Officers Section 204.

Attorney General’s Opinions

Proceeds of bond issue cannot be diverted to other uses when purposes of bond issue are not satisfied. 1985 Op Atty Gen, No. 85‑138, p 381.

**SECTION 4‑9‑190.** Certain provisions inapplicable to board of commissioners form of government.

 The sections of this article, except Sections 4‑9‑10 and 4‑9‑20 shall not apply to the board of commissioners form of government provided for in Article 11.

HISTORY: 1962 Code Section 14‑3716; 1975 (59) 692.

**SECTION 4‑9‑195.** Grant of special property tax assessments to “rehabilitated historic property” or “low and moderate income rental property”.

 (A) The governing body of any county by ordinance may grant the special property tax assessments authorized by this section to real property which qualifies as either “rehabilitated historic property” or as “low and moderate income rental property” in the manner provided in this section. A county governing body may designate, in its discretion, an agency or a department to perform its functions and duties pursuant to the provisions of this section in its discretion.

 (1) All qualifying property may receive preliminary certification from the county governing body and upon this preliminary certification, the property must be assessed for two years on the fair market value of the property at the time the preliminary certification was made. If the project is not complete after two years, but the minimum expenditures for rehabilitation have been incurred, the property continues to receive the special assessment until the project is completed.

 (2) Upon completion of a project, the project must receive final certification from the county governing body in order to be eligible for the special assessment. Upon final certification, the property must be assessed for the remainder of the special assessment period on the fair market value of the property at the time the preliminary certification was made or the final certification was made, whichever occurred earlier. If a completed project does not comply with all requirements for final certification, final certification must not be granted and any monies not collected by the county due to the special assessment must be returned to the county.

 (3) The special assessment only begins in the current or future tax years as provided for in this section. In no instance may the special assessment be applied retroactively.

 (B) As used in this section:

 (1) “Historic designation” means the owner of the property applies for and is granted historic designation by the county governing body for the purpose of the special property tax assessment based on one or more of the following reasons:

 (a) the property is listed in the National Register of Historic Places;

 (b) the property is designated as a historic property by the county governing body based upon criteria established by the county governing body and is at least fifty years old; or

 (c) the property is at least fifty years old and is located in a historic district designated by the county governing body at any location within the geographical area of the county.

 (2) “Approval of rehabilitation work” means the proposed and completed rehabilitation work is approved by the reviewing authority as appropriate for the historic building and the historic district in which it is located.

 (3) “Minimum expenditures for rehabilitation” means the owner or his estate rehabilitates the building, with expenditures for rehabilitation exceeding the minimum percentage of the fair market value of the building established by the county in its ordinance. The county governing body may set different minimum percentages for owner‑occupied property and income producing real property, between twenty percent and one hundred percent.

 (4) “Special assessment period” means the county governing body shall set the length of the special assessment in its ordinance of not more than twenty years.

 (5) “Preliminary certification” means a property has met the following conditions:

 (a) the owner of the property applies for and is granted historic designation by the county governing body; and

 (b) the proposed rehabilitation receives approval of rehabilitation work from the reviewing authority.

 A county governing body may require that an owner applies for preliminary certification before any project work begins.

 (6) “Final certification” means a property has met the following conditions:

 (a) the owner of the property applies for and is granted historic designation by the county governing body;

 (b) the completed rehabilitation receives approval of rehabilitation work from the reviewing authority; and

 (c) the minimum expenditures for rehabilitation were incurred and paid.

 (7) “Reviewing authority” for approval of rehabilitation work pursuant to this section is defined as:

 (a) the board of architectural review in counties with a board of architectural review with jurisdiction over historic properties operating pursuant to Section 6‑29‑870;

 (b) in counties without a board of architectural review with jurisdiction over historic properties, the county governing body may designate another qualified entity with historic preservation expertise to review the rehabilitation work; or

 (c) if the county governing body does not designate another qualified entity, the Department of Archives and History shall review the rehabilitation work. No separate application to the department is required for properties receiving preliminary and final approval for the federal income tax credit allowed pursuant to Section 47 of the Internal Revenue Code or the state income tax credit allowed pursuant to Section 12‑6‑3535.

 (8) “Rehabilitated historic property” means the property has met all the criteria for final certification.

 (C) “Low and moderate income rental property” is eligible for certification if:

 (1) the property provides accommodations under the Section 8 Program as defined in the United States Housing Act of 1937 and amended by the Housing and Community Act of 1974 for low and moderate income families and persons as defined by Section 31‑13‑170(p); or

 (2) in the case of income‑producing real property, the expenditures for rehabilitation exceed the appraised value of the property; and

 (3) if the low and moderate income housing rehabilitation is located in an area designated by the local government as a Low and Moderate Housing Rehabilitation District; and

 (4) the owner or estate of any property certified as “low and moderate income rental property” takes no actions which cause the property to be unsuitable for such a designation. The county governing body granting the initial certification has the authority to decertify property in these cases, and the property becomes immediately ineligible for the special tax assessments provided for this type of property; and

 (5) if the property qualifies as “historic” as defined in subsection (B)(1), then the rehabilitation work must be approved by the appropriate reviewing authority as provided in subsections (B) and (D).

 (D) The Department of Archives and History may provide training and technical assistance to counties and procedures for application, consideration, and appeal through appropriate regulations for “rehabilitated historic property” provisions of the law. The governing body may establish fees for applications for preliminary or final certification, or both, through the ordinance or regulations.

 (E) When property has received final certification and is assessed as rehabilitated historic property, or low or moderate income rental property, it remains so certified and must be granted the special assessment until the property becomes disqualified by any one of the following:

 (1) written notice by the owner to the county to remove the preferential assessment;

 (2) removal of the historic designation by the county governing body;

 (3) decertification of the property by the local governing body as low or moderate income rental property for persons and families of moderate to low income as defined by Section 31‑13‑170(p);

 (4) rescission of the approval of rehabilitation work by the reviewing authority because of alterations or renovations by the owner or his estate which cause the property to no longer possess the qualities and features which made it eligible for final certification.

 Under no circumstances shall the sale or transfer of ownership of real property certified and assessed in accordance with this section and any ordinance in effect at the time disqualify the property from receiving the special property tax assessment under this section. This provision shall be applicable and given full force and effect to any special property tax assessment granted prior to the effective date of this paragraph notwithstanding any ordinance in effect from time to time to the contrary.

 Notification of any change affecting eligibility must be given immediately to the appropriate county taxing and assessing authorities.

 (F) If an application for preliminary or final certification is filed by May first or the preliminary or final certification is approved by August first, the special assessment authorized by this section is effective for that year. Otherwise it is effective beginning with the following year.

 (G) Once the governing body has granted the special property tax assessments authorized by this section, the owner of the property shall make application to the auditor for the special assessment provided for by this section.

 (H) A property certified to receive the special property tax assessment under the existing law continues to receive the special assessment in effect at the time certification was made.

HISTORY: 1990 Act No. 474, Section 1, eff May 14, 1990; 1992 Act No. 375, Sections 1‑4, eff May 19, 1992; 2004 Act No. 292, Section 1, eff August 16, 2004; 2010 Act No. 182, Section 5, eff May 28, 2010.

Effect of Amendment

The 1992 amendment revised (A)(1) and (2), (B)(4) and (5), and (C), and added subsection (H).

The 2004 amendment rewrote this section.

The 2010 amendment rewrote subsection (E).

CROSS REFERENCES

Department of Archives and History, see Sections 60‑11‑20 et seq.

Powers conferred upon county governing bodies by this section also conferred upon municipal governing bodies, see Section 5‑21‑140.

Regulations pertaining to rehabilitation of designated historic buildings, see S.C. Code of Regulations R. 12‑120 et seq.

Federal Aspects

Section 8 Program, United States Housing Act of 1937, see 42 U.S.C.A. Sections 1401 et seq.

Attorney General’s Opinions

Discussion of the constitutional validity of the Bailey Bill and special assessments. S.C. Op.Atty.Gen. (January 4, 2017) 2017 WL 456088.

ARTICLE 3

Council Form of County Government

(Form No. 1)

**SECTION 4‑9‑310.** Responsibility for policy making and administration; membership of council; applicability of Article 1.

 In those counties adopting the council form of government provided for in this article, the responsibility for policy making and administration of county government shall be vested in the county council which shall consist of not less than three nor more than twelve members who are qualified electors of the county. The structure, organization, powers, duties, functions and responsibilities of county government under the council form shall be as prescribed in Article 1 of this chapter.

HISTORY: 1962 Code Section 14‑3720; 1975 (59) 692.

Attorney General’s Opinions

Regardless of whether the council form of government prescribed in Article 2 of Act No 283 of 1975 [Code 1976 Section 4‑9‑310], the “home rule” legislation, becomes the form of county government for Greenville County by referendum pursuant to Code 1962 Section 14‑3701(a) [Code 1976 Section 4‑9‑10(a)] thereof or by the provisions of Code 1962 Section 14‑3701(b) [Code 1976 Section 4‑9‑10(b)] thereof, there is no provision made under that form of government for the office of county supervisor. 1974‑75 Op Atty Gen, No 4121, p 195.

The Allendale County Supply Act provides the County Board of Directors with authority to levy taxes and appropriate funds to be used for the purposes of reassessment as directed by Act No. 208 of the General Assembly of 1975 [Article 3 of Chapter 43 of Title 12 and Sections 12‑37‑90, 12‑37‑100, 12‑37‑970, 12‑39‑340 and 12‑37‑350 of the 1976 Code]. 1974‑75 Op Atty Gen, No 4094, p 170.

NOTES OF DECISIONS

In general 1

1. In general

Since member of county council is legislating when he votes to enact amendment to county zoning ordinance, he is entitled to immunities which common law traditionally has provided to forestall interference with legislative functions. Bruce v. Riddle (D.C.S.C. 1979) 464 F.Supp. 745, affirmed 631 F.2d 272. Zoning And Planning 1333(3)

ARTICLE 5

Council‑Supervisor Form of County Government

(Form No. 2)

**SECTION 4‑9‑410.** Membership of council; election, term, and compensation of supervisor.

 The council in those counties adopting the council‑supervisor form of government provided for in this article shall consist of not less than two nor more than twelve members who are qualified electors of the county. The supervisor shall serve as chairman and vote only to break tie votes. The supervisor shall be a qualified elector of the county, elected at large from the county in the general election for a term of two or four years.

 The compensation for the supervisor shall be prescribed by the council by ordinance. The council shall not reduce or increase the compensation of the supervisor during the term of office for which he was elected.

HISTORY: 1962 Code Section 14‑3730; 1975 (59) 692.

Attorney General’s Opinions

A supervisor in a council‑supervisor form of government under is an elected official based on Section 4‑9‑410 both generally speaking and for purposes of Section 4‑9‑30(7). S.C. Op.Atty.Gen. (April 2, 2013) 2013 WL 1695510.

If Anderson County selects the council‑supervisor form of county government provided for in Article 3 of Act No. 283 of 1975 [Article 5 of Chapter 9 of Title 40 of the 1976 Code], the “home rule” legislation, the supervisor will serve as chairman of the council pursuant to Code 1962 Section 14‑3730 of that Act [Code 1976 Section 4‑9‑410] but will not be elected to that position by virtue of Code 1962 Section 14‑3706 of that Act [Code 1976 Section 4‑9‑90] 1974‑75 Op Atty Gen, No 4167, p 228.

Because the county supervisor is directly elected by the people, the county’s personnel system policies and procedures are inapplicable to the supervisor. 1987 Op Atty Gen, No. 87‑27(2), p 82.

The commencement of the term of office for county supervisor is January 2 following the election. 1987 Op Atty Gen, No. 87‑27(1).

The salary of a county supervisor may be increased during his term of office. 1987 Op Atty Gen, No. 87‑7, p 41.

**SECTION 4‑9‑420.** Powers and duties of supervisor.

 The powers and duties of the supervisor shall include, but not be limited to, the following:

 (1) to serve as the chief administrative officer of the county government;

 (2) to execute the policies and legislative actions of the council;

 (3) to direct and coordinate operational agencies and administrative activities of the county government;

 (4) to prepare annual operating and capital improvement budgets for submission to the council;

 (5) to supervise the expenditure of funds appropriated by council;

 (6) to prepare annual, monthly and other reports for council on finances and administrative activities of the county;

 (7) to recommend measures for adoption;

 (8) to serve as presiding officer of the council, voting in case of council ties;

 (9) to serve as official spokesman for the council with respect to council’s policies and programs;

 (10) to inspect books, accounts, records, or documents pertaining to the property, money or assets of the county;

 (11) to be responsible for the administration of county personnel policies approved by the council including salary and classification plans;

 (12) to be responsible for employment and discharge of personnel subject to the provisions of subsection (7) of Section 4‑9‑30 and subject to the appropriation of funds by the council for that purpose.

HISTORY: 1962 Code Section 14‑3731; 1975 (59) 692.

Attorney General’s Opinions

A public official who spends public money in excess of the appropriated amount acts unlawfully. S.C. Op.Atty.Gen. (July 5, 2016) 2016 WL 3946153.

NOTES OF DECISIONS

In general 1

1. In general

Item (12) gives county supervisor general power to employ and discharge county personnel coming within the jurisdiction of county council, but such power to employ personnel is limited, first, by the existence of a position to fill and, second, by the appropriation of funds with which to pay the employee. Poore v. Gerrard (S.C. 1978) 271 S.C. 1, 244 S.E.2d 510. Counties 62; Public Employment 69

General power to appoint and discharge county attorney under the council‑supervisor form of county government rests with the county supervisor. Poore v. Gerrard (S.C. 1978) 271 S.C. 1, 244 S.E.2d 510.

**SECTION 4‑9‑430.** Powers of council and its members; authority of supervisor over certain elected officials.

 The council shall not remove any county administrative officers or employees whom the county supervisor or any of his subordinates are empowered to appoint, unless by two‑thirds vote of the members present and voting.

 Except for the purposes of inquiries and official investigations, neither the council nor its members shall give direct orders to any county officer or employee, either publicly or privately.

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

HISTORY: 1962 Code Section 14‑3732; 1975 (59) 692.

NOTES OF DECISIONS

In general 1

1. In general

While county council could discharge county attorney appointed by the county supervisor by a two‑thirds vote, an attempt to discharge the county attorney by a vote other than a two‑thirds vote was ineffective. Poore v. Gerrard (S.C. 1978) 271 S.C. 1, 244 S.E.2d 510.

General power to appoint and discharge county attorney under the council‑supervisor form of county government rests with the county supervisor. Poore v. Gerrard (S.C. 1978) 271 S.C. 1, 244 S.E.2d 510.

**SECTION 4‑9‑440.** Applicability of Article 1.

 Except as specifically provided for in this article, the structure, organization, powers, duties, functions, and responsibilities of county government under the council‑supervisor form shall be as prescribed in Article 1 of this chapter.

HISTORY: 1962 Code Section 14‑3733; 1975 (59) 692.

ARTICLE 7

Council‑Administrator Form of County Government

(Form No. 3)

**SECTION 4‑9‑610.** Membership of council; election and term of members.

 The council in those counties adopting the council‑administrator form of government provided for in this article shall consist of not less than three nor more than twelve members who are qualified electors of the county. Council members shall be elected in the general election for terms of two or four years commencing on the first of January next following their election.

HISTORY: 1962 Code Section 14‑3740; 1975 (59) 692.

Attorney General’s Opinions

In counties having a council‑administrator form of government, the County Council must approve a reorganizational change before it may be implemented. 1982 Op Atty Gen, No 82‑57, p 60.

Under the council‑administrator form of government, the chairman is selected by the council and his salary is set by the council. 1976‑77 Op Atty Gen, No 77‑97, p 86.

The Beaufort County Council is not authorized to provide general county funds to Hilton Head Hospital, a private, eleemosynary corporation, to be used for the payment of interest on the latter’s bonded indebtedness. 1976‑77 Op Atty Gen, No 77‑229, p 173.

NOTES OF DECISIONS

In general 1

1. In general

Former district residency requirements for candidates for the Charleston County council remained in effect, despite challenge that they were contrary to the provisions of the Home Rule Act, due to Charleston County’s failure to hold a timely referendum. Infinger v. Edwards (S.C. 1977) 268 S.C. 375, 234 S.E.2d 214.

Statute establishing voting qualifications, prerequisites to voting, or standards, practices or procedures with respect to voting, different from those in force or effect in county on November 1, 1964 with respect to election of members of the county council and its separately elected chairman was subject to the pre‑clearance requirements of Section 5 of the Voting Rights Act of 1965, as amended, 42 USCA Section 1973c. Horry County v. U. S., 1978, 449 F.Supp. 990. Counties 38

**SECTION 4‑9‑620.** Employment and qualifications of administrator; compensation; term of employment; procedure for removal.

 The council shall employ an administrator who shall be the administrative head of the county government and shall be responsible for the administration of all the departments of the county government which the council has the authority to control. He shall be employed with regard to his executive and administrative qualifications only, and need not be a resident of the county at the time of his employment. The term of employment of the administrator shall be at the pleasure of the council and he shall be entitled to such compensation for his services as the council may determine. The council may, in its discretion, employ the administrator for a definite term. If the council determines to remove the county administrator, he shall be given a written statement of the reasons alleged for the proposed removal and the right to a hearing thereon at a public meeting of the council. Within five days after the notice of removal is delivered to the administrator he may file with the council a written request for a public hearing. This hearing shall be held at a council meeting not earlier than twenty days nor later than thirty days after the request is filed. The administrator may file with the council a written reply not later than five days before the hearing. The removal shall be stayed pending the decision at the public hearing.

HISTORY: 1962 Code Section 14‑3741; 1975 (59) 692.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 42, Authority to Terminate.

Attorney General’s Opinions

The county administrator is not responsible for the administration of the library board of trustees. S.C. Op.Atty.Gen. (July 28, 2014) 2014 WL 3886690.

Under the council‑administrator form of government, a county administrator, rather than a county council itself, would have authority to employ and discharge a zoning administrator once that position is established by council following the advent of home rule. 1986 Op Atty Gen, No. 86‑48, p 141.

NOTES OF DECISIONS

In general 1

Employment contracts 2

1. In general

County administrator did not act outside the scope of his employment with actual malice and intent to harm tax assessor when he terminated her for insubordination based on her refusal to withdraw her appeal from assessment decision of county board of assessment appeals and, thus, administrator enjoyed immunity from liability in his individual capacity to tax assessor for her discharge, where administrator was acting within scope of his administrative duties in informing tax assessor of county council policy of not appealing decisions of board of assessment appeals and within the scope of his officer in terminating tax assessor, and administrator had given tax assessor numerous opportunities to comply with his directive that she withdraw her appeal before he terminated her. Antley v. Shepherd (S.C.App. 2000) 340 S.C. 541, 532 S.E.2d 294, rehearing denied, certiorari granted, affirmed as modified 349 S.C. 600, 564 S.E.2d 116. Counties 92; Public Employment 934

Failure to comply with the statutory removal procedure by not supplying specific reasons for removal or not providing a meaningful public hearing are proper grounds for a wrongful discharge suit. A public officer discharged unlawfully is entitled to all wages without offset. Drawdy v. Town of Port Royal (S.C.App. 1990) 302 S.C. 125, 394 S.E.2d 25.

2. Employment contracts

County’s alleged conditioning of county administrator’s continued employment on his agreement to engage in acts that would violate statute prohibiting discharge of a citizen from employment because of political opinions or the exercise of political rights and privileges invoked the public policy exception to the at‑will employment doctrine. Cunningham v. Anderson County (S.C.App. 2013) 402 S.C. 434, 741 S.E.2d 545, rehearing denied, affirmed in part, reversed in part 414 S.C. 298, 778 S.E.2d 884. Counties 67; Public Employment 258(3)

County administrator, whose employment contract was determined to be void for purporting to bind a successor county council, could assert a wrongful discharge claim based on the public policy exception to the at‑will employment doctrine, even though his contract contained a severance provision which normally would have precluded recovery on such a theory, where it was the illegality of the contract, rather than any contractual intent to create an at‑will employment relationship, that relegated administrator to an at‑will status. Cunningham v. Anderson County (S.C.App. 2013) 402 S.C. 434, 741 S.E.2d 545, rehearing denied, affirmed in part, reversed in part 414 S.C. 298, 778 S.E.2d 884. Counties 67; Public Employment 225

County administrator, whose employment contract was determined to be void for purporting to bind a successor county council, sufficiently presented his “at‑will” argument to circuit court such that he did not waive the argument and he could seek relief for an alleged wrongful termination under the public policy exception to the at‑will employment doctrine, where administrator argued, albeit incorrectly, in his summary judgment filings that his contract should be treated like the contract in a prior Supreme Court decision “placing the employee in the same position as an at‑will employee” with the only difference being the contract’s notice provision. Cunningham v. Anderson County (S.C.App. 2013) 402 S.C. 434, 741 S.E.2d 545, rehearing denied, affirmed in part, reversed in part 414 S.C. 298, 778 S.E.2d 884. Judgment 183

Employment contract that county administrator entered into with lame‑duck county council, following an election in which three of the council’s members were defeated but before new members assumed office, was void in its entirety, including its severance and sick pay provisions, under the law of municipalities, even though the Home Rule Act allowed counties to employ an administrator for a definite term; the Act did not clearly authorize a definite term to extend beyond the terms of outgoing council members, the contract deprived the new council of a discretion that public policy required to be unimpaired, and the powers of the county had to be liberally construed. Cunningham v. Anderson County (S.C.App. 2013) 402 S.C. 434, 741 S.E.2d 545, rehearing denied, affirmed in part, reversed in part 414 S.C. 298, 778 S.E.2d 884. Counties 65; Counties 74(1); Public Employment 141; Public Employment 363; Public Employment 373

**SECTION 4‑9‑630.** Powers and duties of administrator.

 The powers and duties of the administrator shall include, but not be limited to, the following:

 (1) to serve as the chief administrative officer of the county government;

 (2) to execute the policies, directives and legislative actions of the council;

 (3) to direct and coordinate operational agencies and administrative activities of the county government;

 (4) to prepare annual operating and capital improvement budgets for submission to the council and in the exercise of these responsibilities he shall be empowered to require such reports, estimates and statistics on an annual or periodic basis as he deems necessary from all county departments and agencies;

 (5) to supervise the expenditure of appropriated funds;

 (6) to prepare annual, monthly and other reports for council on finances and administrative activities of the county;

 (7) to be responsible for the administration of county personnel policies including salary and classification plans approved by council;

 (8) to be responsible for employment and discharge of personnel subject to the provisions of subsection (7) of Section 4‑9‑30 and subject to the appropriation of funds by the council for that purpose; and

 (9) to perform such other duties as may be required by the council.

HISTORY: 1962 Code Section 14‑3742; 1975 (59) 692.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 42, Authority to Terminate.

S.C. Jur. Public Officers and Public Employees Section 57, Home Rule Act.

S.C. Jur. Public Officers and Public Employees Section 67, Ministerial and Discretionary Duties.

Attorney General’s Opinions

Discussion of the validity of employee and supervisor incentives provided by the Horry County Budget Savings Suggestion Program. S.C. Op.Atty.Gen. (August 1, 2016) 2016 WL 4222141.

Under the council‑administrator form of government, a county administrator, rather than a county council itself, would have authority to employ and discharge a zoning administrator once that position is established by council following the advent of home rule. 1986 Op Atty Gen, No. 86‑48, p 141.

The county administrator has no authority over the disbursement of the county board of registration members annual supplement as the disbursement is controlled by Section 7‑5‑40 and the 1993‑94 General Appropriations Bill. 1994 Op Atty Gen, No. 94‑16, p. 37.

Where the membership of the county board was decreased, the annual supplement should be divided equally among the remaining members of the board. 1994 Op Atty Gen, No. 94‑16, p. 37.

NOTES OF DECISIONS

In general 1

Delivery of documents 2

1. In general

County administrator did not have authority under the Home Rule Act to suspend three employees of county auditor for violating personnel policies, as auditor was an elected official. Eargle v. Horry County (S.C. 2001) 344 S.C. 449, 545 S.E.2d 276. Counties 67; Public Employment 254

A county’s authority under the Home Rule Act to promulgate personnel policies applicable to all county employees does not cloak the county administrator with the power to suspend employees of elected officials. Eargle v. Horry County (S.C. 2001) 344 S.C. 449, 545 S.E.2d 276. Counties 24; Counties 67; Public Employment 254

Remand to the trial court was required for a finding on whether county administrator acted without substantial justification, which was required for county auditor to be entitled to attorney fees as prevailing party in action challenging administrator’s authority under the Home Rule Act to suspend three of her employees for violating personnel policies. Eargle v. Horry County (S.C. 2001) 344 S.C. 449, 545 S.E.2d 276. Counties 228

County administrator lacked authority to suspend the employees of county auditor, an elected official; to interpret provisions of Home Rule Act, which give county and administrator authority to develop and administer personnel system policies and procedures for regulation of county employees, as authorizing the suspension of employees of elected officials would give administrator an impermissible level of control, albeit indirect, over elected official, in violation of provision of Home Rule Act that directs that administrator shall exercise no authority over any elected officials of county. Eargle v. Horry County (S.C.App. 1999) 335 S.C. 425, 517 S.E.2d 3, rehearing denied, certiorari granted, affirmed 344 S.C. 449, 545 S.E.2d 276. Counties 24; Counties 67; Public Employment 254

2. Delivery of documents

County administrator’s duty to deliver county’s financial documents to county council member was quasi‑judicial duty which required exercise of discretion in determining how act of delivering documents should be done, and thus mandamus relief was not available to compel administrator to deliver documents to member in particular manner or within particular time frame. (Per Moore, J., with one justice concurring and two justices concurring specially.) Wilson v. Preston (S.C. 2008) 378 S.C. 348, 662 S.E.2d 580. Mandamus 82

**SECTION 4‑9‑640.** Preparation and submission of budget and descriptive statement.

 The county administrator shall prepare the proposed operating and capital budgets and submit them to the council at such time as the council determines. At the time of submitting the proposed budget, the county administrator shall submit to the council a statement describing the important features of the proposed budgets including all sources of anticipated revenue of the county government and the amount of tax revenue required to meet the financial requirements of the county.

HISTORY: 1962 Code Section 14‑3743; 1975 (59) 692.

**SECTION 4‑9‑650.** Authority of administrator over certain elected officials.

 With 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.

HISTORY: 1962 Code Section 14‑3744; 1975 (59) 692.

Attorney General’s Opinions

A clerk of court has exclusive use of the bail bondsmen fees and a county administrator has no authority to control the expenditure of the funds; however, the clerk of court must comply with a county’s accounting, reporting, and purchasing systems and submit annual fiscal reports. S.C. Op.Atty.Gen. (June 5, 2017) 2017 WL 2601033.

Discussion of the use of a vehicle by the Hampton County Coroner’s Office. S.C. Op.Atty.Gen. (April 8, 2013) 2013 WL 1695523.

The County Council would improperly alter or expand the statutory duties of the Treasurer if it were to force the Treasurer to operate and maintain a satellite office. S.C. Op.Atty.Gen. (May 7, 2012) 2012 WL 1774920.

County council is without authority to interpret the coroner’s responsibilities and direct him to perform in a particular manner. 1992 Op Atty Gen No. 92‑47.

There is no requirement mandating county council approval where vehicle seized during drug operation is traded for another vehicle. 1991 Op Atty Gen No 91‑48, p 123.

While county council is vested with discretion in dealing with many appropriations from standpoint of general economic and efficiency concerns, such discretion may not be utilized in manner which would interfere with decisions of sheriff as to hiring and discharge of deputy sheriff. Thus it is extremely doubtful whether action could be taken by county council to withdraw appropriation for position of particular deputy sheriff. Such could be construed as indirectly terminating particular deputy sheriff’s position which is a position county council is not empowered to abolish directly. 1991 Op Atty Gen No 91‑48, p 123.

NOTES OF DECISIONS

In general 1

1. In general

County administrator lacked authority to suspend the employees of county auditor, an elected official; to interpret provisions of Home Rule Act, which give county and administrator authority to develop and administer personnel system policies and procedures for regulation of county employees, as authorizing the suspension of employees of elected officials would give administrator an impermissible level of control, albeit indirect, over elected official, in violation of provision of Home Rule Act that directs that administrator shall exercise no authority over any elected officials of county. Eargle v. Horry County (S.C.App. 1999) 335 S.C. 425, 517 S.E.2d 3, rehearing denied, certiorari granted, affirmed 344 S.C. 449, 545 S.E.2d 276. Counties 24; Counties 67; Public Employment 254

**SECTION 4‑9‑660.** Authority of council and its members over county officers and employees.

 Except for the purposes of inquiries and investigations, the council shall deal with county officers and employees who are subject to the direction and supervision of the county administrator solely through the administrator, and neither the council nor its members shall give orders or instructions to any such officers or employees.

HISTORY: 1962 Code Section 14‑3745; 1975 (59) 692.

Attorney General’s Opinions

Under the council‑administrator form of government, a county administrator, rather than a county council itself, would have authority to employ and discharge a zoning administrator once that position is established by council following the advent of home rule. 1986 Op Atty Gen, No. 86‑48, p 141.

The Dorchester County Council may require employees to use a time clock and withhold their compensation for non‑conformity as long as the same requirement is applied uniformly to all County employees. 1976‑77 Op Atty Gen, No 77‑124, p 106.

The provisions of Act No. 283 of 1975, the “Home Rule” legislation, do not empower the Lexington County Council to alter the salary of the Lexington County Legislative Delegation’s Secretary once the delegation has set it. 1976‑77 Op Atty Gen, No 77‑222, p 171.

Authority to hire and discharge the county attorney is within the purview of the administrator in the council‑administrator form of government under the Home Rule Act. Op Atty Gen, No. 87‑2.

Notes of Decisions

In general 1

Review 2

1. In general

Developer failed to state facts in its complaint sufficient to constitute a cause of action for injunctive relief prohibiting county council members from violating statute that required council members to deal only with county administrator and prohibited council members from giving orders or directions to county officers or employees, where developer failed to allege it would be irreparably harmed if injunctive relief was not granted or that it had no adequate remedy at law, and developer actually sought a remedy of law through its conspiracy claim based on the same conduct of the council members, seeking as damages the costs incurred in developer’s acquisition of the property at issue. Cricket Cove Ventures, LLC v. Gilland (S.C.App. 2010) 390 S.C. 312, 701 S.E.2d 39, rehearing denied. Injunction 1547

Home Rule Act authorized the current county council, in a county that operated under a “council‑administrator” form of government, to conduct its own investigation into former county council’s business practices, after current council had been elected but before it had been installed, in declaring an “anticipatory breach” of the contract of the then‑serving county administrator and awarding him over $1 million, and in promoting the then‑serving deputy county administrator to the position of county administrator, and authorized the current county council to engage professionals, i.e., an accountant, an accounting firm, an attorney, and a law firm, needed to carry out the investigation. Bradshaw v. Anderson County (S.C. 2010) 388 S.C. 257, 695 S.E.2d 842. Counties 24; Counties 48

2. Review

Plaintiff taxpayers failed to preserve for appellate review a claim that investigatory actions of county council, with respect to former county council’s business practices, were prohibited under the county code, where trial court’s order in taxpayer’s action for declaratory and injunctive relief, which action was dismissed for failure to state a claim, contained the unchallenged finding that all counsel agreed at oral argument that the provisions of the Home Rule Act prevailed over any contrary provisions of the county code. Bradshaw v. Anderson County (S.C. 2010) 388 S.C. 257, 695 S.E.2d 842. Declaratory Judgment 393

**SECTION 4‑9‑670.** Applicability of Article 1.

 Except as specifically provided for in this article, the structure, organization, powers, duties, functions and responsibilities of county government under the council‑administrator form shall be as prescribed in Article 1 of this chapter.

HISTORY: 1962 Code Section 14‑3746; 1975 (59) 692.

ARTICLE 9

Council‑Manager Form of County Government

(Form No. 4)

**SECTION 4‑9‑810.** Membership of council; election and terms of members.

 The council in those counties adopting the council‑manager form of government provided for in this article shall consist of not less than five nor more than twelve members who are qualified electors of the county. Council members shall be elected in the general election for terms of two or four years commencing on the first of January next following their election.

HISTORY: 1962 Code Section 14‑3770; 1975 (59) 692.

**SECTION 4‑9‑820.** Employment and qualifications of manager; term of office; compensation; procedure for removal.

 The council shall employ a manager who shall be the administrative head of the county government and shall be responsible for the administration of all the departments of the county government which the council has the authority to control. He shall be employed with regard to his executive and administrative qualifications only, and need not be a resident of the county at the time of his employment. The term of employment of the manager shall be at the pleasure of the council and he shall be entitled to such compensation for his services as the council may determine. The council may, in its discretion, employ the manager for a definite term. If the council determines to remove the county manager, he shall be given a written statement of the reasons alleged for the proposed removal and the right to a hearing thereon at a public meeting of the council.

 Within five days after the notice of removal is delivered to the manager, he may file with the council a written request for a public hearing. This hearing shall be held at a council meeting not earlier than twenty days nor later than thirty days after the request is filed. The manager may file with the council a written reply not later than five days before the hearing. The removal shall be stayed pending the decision at the public hearing.

HISTORY: 1962 Code Section 14‑3771; 1975 (59) 692.

NOTES OF DECISIONS

In general 1

1. In general

Failure to comply with the statutory removal procedure by not supplying specific reasons for removal or not providing a meaningful public hearing are proper grounds for a wrongful discharge suit. A public officer discharged unlawfully is entitled to all wages without offset. Drawdy v. Town of Port Royal (S.C.App. 1990) 302 S.C. 125, 394 S.E.2d 25.

**SECTION 4‑9‑830.** Powers and duties of manager.

 The powers and duties of the manager shall include, but not be limited to, the following:

 (1) to serve as the chief administrative officer of the county government;

 (2) to execute the policies, directives and legislative actions of the council;

 (3) to direct and coordinate operational agencies and administrative activities of the county government;

 (4) to prepare annual operating and capital improvement budgets for submission to the council and, in the exercise of that authority, he shall be empowered to require such reports, estimates and statistics on an annual or periodic basis as he deems necessary from all county departments and agencies for the performance of his duties in budget preparation;

 (5) to supervise the expenditure of appropriated funds;

 (6) to prepare annual, monthly and other reports for council on finances and administrative activities of the county;

 (7) to be responsible for the administration of county personnel policies including salary and classification plans approved by council;

 (8) to be responsible for employment and discharge of personnel subject to the provisions of subsection (7) of Section 4‑9‑30 and subject to the appropriation of funds by the council for that purpose; and

 (9) to perform such other duties as may be required by the council.

HISTORY: 1962 Code Section 14‑3772; 1975 (59) 692.

**SECTION 4‑9‑840.** Preparation and submission of budget and descriptive statement.

 The county manager shall prepare the proposed operating and capital budgets and submit them to the council at such time as the council determines. At the time of submitting the proposed budget, the county manager shall submit to the council a statement describing the important features of the proposed budgets including all sources of anticipated revenue of the county government and the amount of tax revenue required to meet the financial requirements of the county.

HISTORY: 1962 Code Section 14‑3773; 1975 (59) 692.

**SECTION 4‑9‑850.** Authority of county manager over elected officials; authority of council and its members over county officers and employees.

 With the exception of organizational policies established by the governing body, the county manager shall exercise no authority over any elected officials of the county.

 Except for the purposes of inquiries and investigations, neither the council nor its members shall give orders or instructions to county officers or employees.

HISTORY: 1962 Code Section 14‑3774; 1975 (59) 692.

**SECTION 4‑9‑860.** Election or appointment of county treasurer and auditor.

 The county treasurer and county auditor, or their counterparts, by whatever terms those officials are designated may be elected or appointed by council as the council may determine by ordinance. If such officials are appointed, they shall be subject to control by council and the manager in the same manner as other appointed county department heads.

HISTORY: 1962 Code Section 14‑3775; 1975 (59) 692.

**SECTION 4‑9‑870.** Applicability of Article 1.

 Except as specifically provided for in this article, the structure, organization, powers, duties, functions and responsibilities of county government under the council‑manager form shall be as prescribed in Article 1 of this chapter.

HISTORY: 1962 Code Section 14‑3776; 1975 (59) 692.

ARTICLE 11

County Board of Commissioners Form of County Government

(Form No. 5)

**SECTION 4‑9‑1010.** Membership of county board of commissioners.

 The governing body in those counties adopting the county board of commissioners form of government provided for in this article shall consist of not less than four nor more than twelve commissioners, as may be determined by the General Assembly for each county electing to adopt the form of government provided for in this article, all of whom shall be qualified electors of the county.

HISTORY: 1962 Code Section 14‑3785; 1975 (59) 692.

LIBRARY REFERENCES

20 C.J.S., Counties Sections 74 et seq.

NOTES OF DECISIONS

In general 1

1. In general

The board of commissioners form of county government established under Code 1962 Section 14‑3785.2 [Code 1976 Section 4‑9‑1030] is repugnant to South Carolina Constitution Article VIII Section 7 in that it provides in effect for legislative action for a specific county. Duncan v. York County (S.C. 1976) 267 S.C. 327, 228 S.E.2d 92.

**SECTION 4‑9‑1020.** Supervisor as administrator; method of election and terms of office of supervisor and commission members; vacancies.

 Those counties presently electing the supervisor shall continue to do so and he shall serve as chairman of the board of commissioners. Those counties presently hiring or appointing the supervisor or administrator shall continue to do so. Method of election and terms of office of either two years or four years for the supervisor and board of commissioners shall be as the General Assembly shall provide when a form of government is selected for the county concerned. In the event terms for commission members are established for four years, terms of office shall be staggered so that not more than one‑half of the board of commissioners shall be elected at any single general election except the initial election at which time one‑half of the membership shall be elected for two years only.

 Terms shall commence on the Monday following their election. Vacancies shall be filled in the same manner for the unexpired portion of the term only. Provided, that any vacancy having less than one year of the term remaining shall be filled in the manner provided for boards, committees and commissions in Section 4‑9‑1100.

HISTORY: 1962 Code Section 14‑3785.1; 1975 (59) 692.

LIBRARY REFERENCES

20 C.J.S., Counties Section 75.

Attorney General’s Opinions

The fact that Members of the Boards of Commissioners in some counties were appointed before the “home rule” legislation does not mean that commissioners will necessarily be appointed if that form of government becomes effective later. 1974‑75 Op Atty Gen, No 4163, p 226.

NOTES OF DECISIONS

In general 1

1. In general

The board of commissioners form of county government established under Code 1962 Section 14‑3785.2 [Code 1976 Section 4‑9‑1030] is repugnant to South Carolina Constitution Article VIII Section 7 in that it provides in effect for legislative action for a specific county. Duncan v. York County (S.C. 1976) 267 S.C. 327, 228 S.E.2d 92.

**SECTION 4‑9‑1030.** Board shall be county governing body; duties of board.

 The county board of commissioners shall be the governing body of the county. The board shall be charged with the administration of county affairs, including but not limited to:

 (a) The hearing of all budget requests and the submission of a proposed annual budget for the operation of the affairs of the county which shall be submitted to the General Assembly not later than March fifteenth for appropriate action.

 (b) The formulation and implementation of personnel policies for county employees including supervision of insurance programs, except that the rights of the constitutional officers of the county, the county tax collector, the auditor and the treasurer to select their own personnel shall not be infringed.

 (c) The purchasing of all supplies and equipment by the county and the maintenance of inventory records thereon.

 (d) Approval of expenditures from the contingent fund as it may be established from time to time by law.

 (e) The supervision of all buildings and grounds owned by the county, including the allocation of office space in all county buildings and the providing of office space for all countywide officers.

 (f) The acquisition of property by purchase or gift.

 (g) The adoption, use and alteration of a corporate seal.

 (h) The leasing or sale of property owned by the county.

 (i) The making of contracts for the county.

 (j) The exercise of the power of eminent domain within the county.

 (k) The performance of such other acts necessary to carry out its responsibilities.

 (l) The determination of its own rules and order of business.

HISTORY: 1962 Code Section 14‑3785.2; 1975 (59) 692.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 15, Counties.

Attorney General’s Opinions

It is unlikely that a county may require property owners to dedicate land free of charge for right‑of‑way, as such would be an unconstitutional deprivation of property. 1975‑76 Op Atty Gen No 4525, p 389.

A County Board of Commissioners may increase taxes for school purposes without conducting a referendum; however, if a referendum is held it is merely advisory. 1974‑75 Op Atty Gen, No 3981, p 53.

NOTES OF DECISIONS

In general 1

1. In general

The board of commissioners form of county government established under Code 1962 Section 14‑3785.2 [Code 1976 Section 4‑9‑1030] is repugnant to South Carolina Constitution Article VIII Section 7 in that it provides in effect for legislative action for a specific county. Duncan v. York County (S.C. 1976) 267 S.C. 327, 228 S.E.2d 92.

**SECTION 4‑9‑1040.** Time and place of meetings; special meetings; notice.

 The board shall meet at least once each month at such times, dates and places as set by it at its first meeting following each general election. Special meetings may be called at any time by the chairman or by a majority of the commissioners; provided, that all members shall be notified as to the subject matter and the date, time and place of such meeting.

HISTORY: 1962 Code Section 14‑3785.3; 1975 (59) 692.

LIBRARY REFERENCES

20 C.J.S., Counties Section 88.

**SECTION 4‑9‑1050.** Board may elect clerk; duties, salary, and term of office.

 The board in each of the counties may elect a clerk who shall perform the duties of secretary and be paid an annual salary as provided by law and whose term of office shall be coterminous with that of the members of the board electing him.

HISTORY: 1962 Code Section 14‑3785.4; 1975 (59) 692.

LIBRARY REFERENCES

20 C.J.S., Counties Section 80.

**SECTION 4‑9‑1060.** Commissioners shall account for claims audited and allowed and conform to prescribed system of bookkeeping.

 The county commissioners shall keep an account of claims audited and allowed by them against the several funds appropriated for county purposes in accordance with a form to be prescribed by the Comptroller General, and they shall conform to any system of bookkeeping that may be prescribed for use in their office by the Comptroller General.

HISTORY: 1962 Code Section 14‑3785.5; 1975 (59) 692.

LIBRARY REFERENCES

20 C.J.S., Counties Section 91.

**SECTION 4‑9‑1070.** Commissioners may administer oaths and punish for contempt of their proceedings.

 The members of the county board of commissioners may administer oaths to all persons appearing before them and punish by fine not exceeding ten dollars or imprisonment in the county jail not exceeding twenty hours any and all persons guilty of disorderly conduct amounting to an open or direct contempt or wilful interruption of their proceedings.

HISTORY: 1962 Code Section 14‑3785.6; 1975 (59) 692.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Disorderly Conduct Section 6, Boisterous Conduct.

S.C. Jur. Disorderly Conduct Section 11, Particular Proceedings.

**SECTION 4‑9‑1080.** Commissioners shall not be interested in certain contracts.

 No member of a board of county commissioners shall be directly or indirectly interested in any contract pertaining to his duty as commissioner.

HISTORY: 1962 Code Section 14‑3785.7; 1975 (59) 692.

LIBRARY REFERENCES

20 C.J.S., Counties Section 192.

**SECTION 4‑9‑1090.** Commissioners must give bond.

 The county commissioners shall each give bond in the sum of five thousand dollars.

HISTORY: 1962 Code Section 14‑3785.8; 1975 (59) 692.

Attorney General’s Opinions

There are no provisions of the Home Rule Act which require County Council members under any of the four council forms to post performance bonds. 1976‑77 Op Atty Gen, No 77‑8, p 19.

**SECTION 4‑9‑1100.** Governor shall make certain appointments.

 All appointments to boards, committees and commissions in those counties adopting the county board of commissioners form of government shall be made by the Governor upon approval of a majority of the members of the legislative delegation, including the Senator or Senators of the particular county.

HISTORY: 1962 Code Section 14‑3585.10; 1975 (59) 692.

LAW REVIEW AND JOURNAL COMMENTARIES

Miller, Who shall rule and govern? Local legislative delegations, racial politics, and the Voting Rights Act. 102 Yale L J 105 (Oct 1992).

**SECTION 4‑9‑1110.** Inapplicability of certain provisions to county board of commissioners form of government.

 The provisions of Sections 6‑11‑410 to 6‑11‑650 shall not apply to counties operating under the county board of commissioners form of government.

HISTORY: 1962 Code Section 14‑3785.9; 1975 (59) 692.

ARTICLE 13

Initiative and Referendum

**SECTION 4‑9‑1210.** Electors may propose and adopt or reject certain ordinances; submission by petition to council.

 The qualified electors of any county may propose any ordinance, except an ordinance appropriating money or authorizing the levy of taxes, and adopt or reject such ordinance at the polls. Any initiated ordinance may be submitted to the council by a petition signed by qualified electors of the county equal in number to at least fifteen percent of the qualified electors of the county.

HISTORY: 1962 Code Section 14‑3790; 1975 (59) 692; 1977 Act No. 33 Section 1.

CROSS REFERENCES

Initiative and referendum in municipal corporations, see Sections 5‑17‑10 et seq.

LIBRARY REFERENCES

20 C.J.S., Counties Section 92.

Attorney General’s Opinions

The Marion County Library Board of Trustees lacks authority to impose or increase property taxes for the benefit of the Marion County Library System and cannot legally sponsor a voter referendum for such an increase. S.C. Op.Atty.Gen. (May 6, 2011) 2011 WL 2214064.

Whether reducing a fee constitutes an ordinance appropriating money, would best be answered by the courts. S.C. Op.Atty.Gen. (March 1, 2011) 2011 WL 1444713.

County council would not have statutory authority to limit service of county council members nor statutory authority to conduct recall referendum. Electorate, by initiative and referendum would have no greater power than council and thus, such an initiated ordinance would most probably be facially defective and invalid. County council presented with such an initiated ordinance would have no obligation to call for referendum. 1993 Op Atty Gen No. 93‑45.

A petition submitted to a county council pursuant to Section 4‑9‑1210 of the Code to initiate the initiative and referendum process must set forth the proposed ordinance within the petition. 1989 Op Atty Gen, No. 89‑143, p 385.

NOTES OF DECISIONS

In general 1

1. In general

An ordinance adopted through the process set forth in Section 4‑9‑1210, et seq. is subject to challenge under the contract clause of the U.S. Constitution. Citizens for Lee County, Inc. v. Lee County (S.C. 1992) 308 S.C. 23, 416 S.E.2d 641, rehearing denied.

Administrative measures are not proper matters for an initiated ordinance. An administrative measure is an enactment which puts into execution previously declared policies or previously enacted laws. Town of Hilton Head Island v. Coalition of Expressway Opponents (S.C. 1992) 307 S.C. 449, 415 S.E.2d 801. Municipal Corporations 108.2

The electorate has no greater power to legislate than the council. An initiated ordinance which is facially defective cannot be cured by adoption by the electorate. Town of Hilton Head Island v. Coalition of Expressway Opponents (S.C. 1992) 307 S.C. 449, 415 S.E.2d 801. Municipal Corporations 108.1

**SECTION 4‑9‑1220.** Electors may petition for repeal of certain ordinances.

 Within sixty days after the enactment by the council of any ordinance authorizing the issuance of bonds, notes or other evidence of debt the repayment of which requires a pledge of the full faith and credit of the county, or requires the approval of the issuance of bonds by a public service district within the county a petition signed by qualified electors of the county equal in number to at least fifteen percent of the qualified electors of the county, or if such ordinance relates to a bond issue for a public service district, fifteen percent of the qualified electors of the district may be filed with the clerk of the county council requesting that any such ordinance be repealed; provided, however, that this section shall not apply to bond issues approved by referendum or to notes issued in anticipation of taxes.

HISTORY: 1962 Code Section 14‑3791; 1975 (59) 692; 1977 Act No. 33 Section 1.

Attorney General’s Opinions

A county ordinance that authorizes a bond issue for a special purpose district may be challenged under Section 6‑11‑880 or repealed under Section 4‑9‑1220. 1981 Op Atty Gen No 81‑79, p 100.

**SECTION 4‑9‑1230.** Election shall be held where council fails to adopt or repeal ordinance.

 If the council shall fail to pass an ordinance proposed by initiative petition or shall pass it in a form substantially different from that set forth in the petition therefor or if the council shall fail to repeal an ordinance for which a petition for repeal has been presented, the adoption or repeal of the ordinance concerned shall be submitted to the electors not less than thirty days nor more than one year from the date the council takes its final vote thereon. The council may, in its discretion, and if no regular election is to be held within such period, provide for a special election. All county councils shall be bound by the results of any such referendum.

HISTORY: 1962 Code Section 14‑3792; 1975 (59) 692; 1977 Act No. 33 Section 1.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Hospitals Section 3, Governing Body.

S.C. Jur. Magistrates and Municipal Judges Section 14, Magistrates’ Courts.

S.C. Jur. Public Officers and Public Employees Section 53, County and Municipal Employees.

S.C. Jur. Public Officers and Public Employees Section 57, Home Rule Act.

NOTES OF DECISIONS

In general 1

1. In general

Council has no duty to submit a facially invalid initiative ordinance to the electorate. However, council has no authority to pass judgment on a proposed initiated ordinance. The proper mechanism by which a council shall determine if an initiated ordinance is invalid is by a declaratory judgment action. Town of Hilton Head Island v. Coalition of Expressway Opponents (S.C. 1992) 307 S.C. 449, 415 S.E.2d 801.