CHAPTER 11

County Officers

**SECTION 4‑11‑10.** Time for commencement of terms of county officers.

 The time for the commencement of the terms of office of the various county officers is the first Tuesday in January next after their election, except that the terms of the county auditors and county treasurers shall commence the first day of July next following their election. Nothing in this section applies to those officers who are appointed by the Governor. This section does not apply to elections held for an unexpired term of office.

HISTORY: 1962 Code Section 14‑301; 1952 Code Section 14‑301; 1942 Code Section 3072; 1932 Code Section 3072; Civ. C. ‘22 Section 759; Civ. C. ‘12 Section 675; 1907 (25) 541; 1987 Act No. 21 Section 1, eff March 31, 1987.

Editor’s Note

1987 Act No. 21, Section 2, provides as follows:

“Any present county auditor or county treasurer whose current term of office expires in a particular year prior to the first day of July of that year shall serve through the last day of June of that year.”

Effect of Amendment

The 1987 amendment provided that the terms of office of county auditors and treasurers shall commence on the first day of July following their election.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 30, Establishment of the Term.

Attorney General’s Opinions

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.

The Richland County Council may not proscribe by ordinance a date for the commencement of the treasurer’s and the county auditor’s terms of office, as these are controlled by Section 12‑45‑20 and Section 4‑11‑10. 1976‑77 Op Atty Gen, No 77‑345, p 276.

Terms of probate judges. The term of office of probate judge expires four years from the date of the first Tuesday in January of each alternate general election year, reckoning from the year 1958, except in Georgetown County, where the probate judge is elected at every alternate general election, reckoning from the year 1960. 1965‑66 Op Atty Gen, No 2177, p 312.

NOTES OF DECISIONS

In general 1

1. In general

Absent a mandate by election or otherwise to do so, newly elected county treasurer could not “qualify” for the office prior to the date on which the term to which he was elected commenced, and thus, he was not entitled to assume the office of treasurer prior to that date, even though he took oath of office, posted required bond, and received a pro forma commission from governor, where county did not conduct the election to fill the unexpired term to which the current treasurer had been appointed. Florence County v. Moore (S.C. 2001) 344 S.C. 596, 545 S.E.2d 507. Counties 65; Public Employment 145

Statute providing that the term of office for county treasurers commences on July 1, following their election, reflects the General Assembly’s intent that treasurers’ and auditors’ terms coincide with the state’s fiscal year. Florence County v. Moore (S.C. 2001) 344 S.C. 596, 545 S.E.2d 507. Counties 65; Public Employment 145

Statute providing that the term of office for county treasurers commences on July 1, following their election, does not apply to those appointed by the governor, nor to elections held for an unexpired term of office. Florence County v. Moore (S.C. 2001) 344 S.C. 596, 545 S.E.2d 507. Counties 65; Public Employment 145; Public Employment 184

Masters of court are included under the provisions of this section [Code 1962 Section 14‑301]. Peake v. Young (S.C. 1893) 40 S.C. 41, 18 S.E. 237.

**SECTION 4‑11‑20.** Filling vacancies in county offices; term of office of appointees; duties and liabilities.

 In the event of a vacancy at any time in any of the offices of any county of the State the Governor may appoint some suitable person, who shall be an elector of the county, and, upon duly qualifying according to law, he shall be entitled to enter upon and hold the office to which he has been appointed:

 (1) If it be an elective office, until the next general election for such office if the term of such office be fixed by the State Constitution or until the next general election if the term be not so fixed, in which latter case an election shall then be held to fill the unexpired term and in either such event such person shall hold office until his successor shall qualify; and

 (2) If it be an office which was filled originally by appointment, until the adjournment of the General Assembly at the regular session next after such appointment.

 Any officer so appointed shall be subject to all the duties and liabilities incident to his office during the term of his service therein. Any officer elected to fill an unexpired term under the provisions of this section shall hold office for such term and until his successor shall qualify.

HISTORY: 1962 Code Section 14‑302; 1952 Code Section 14‑302; 1942 Code Section 2351; 1932 Code Section 2351; Civ. C. ‘22 Section 284; Civ. C. ‘12 Section 281; Civ. C. ‘02 Section 254; G. S. 161; R. S. 212; 1882 (18) 375; 1899 (23) 84.

CROSS REFERENCES

Emergency interim successors to County officers, see Section 1‑9‑60.

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

Filling of vacancies in membership of county governing body, see Section 4‑9‑90.

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

LIBRARY REFERENCES

20 C.J.S., Counties Section 107.

RESEARCH REFERENCES

Encyclopedias

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

S.C. Jur. Coroners Section 4, Vacancy in Office.

Attorney General’s Opinions

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.

Governor does not have authority to fill vacancy pending holding of special election. 1993 Op Atty Gen, No. 93‑68.

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.

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.

Governor is required to appoint successor to fill vacancy in office of coroner to serve until next general election and until coroner’s elected successor shall qualify. 1984 Op Atty Gen, No. 84‑78, p. 194.

The offense of conspiracy is an offense involving moral turpitude; a vacancy will be created should a councilman resign and should that resignation be accepted by the appropriate authority, which in the case of county councilman, is the county council; if the term of the councilman would expire within 180 days after the resignation has been accepted, the governor has the authority to appoint a person to fill the vacancy until the holding of the general election; if the term of the resigning councilman will end more than 180 days after the resignation is accepted, the governor does not have the authority to fill the vacancy pending the holding of the special election; Colleton county is now under a court order which precludes the holding of any election therein and the consent of the federal court must be obtained prior to the holding of any election which may be sought to be conducted. 1981 Op Atty Gen, No 81‑42, p 63.

Death of a coroner, after his election and before the date of the beginning of his term, creates vacancy which the governor may fill until the next general election for coroners. 1978 Op Atty Gen, No 78‑19, p 32.

(1) The Director of the Department of Veteran Affairs does not have the authority to select a county Veteran Affairs officer, and such authority cannot be delegated to him by the County Delegation; (2) The Governor can make an interim appointment to that office; (3) The Director of the Veteran Affairs may give advice to the County Delegation, but the selection of the County Veteran Affairs officer must be that of the Delegation. 1976‑77 Op Atty Gen, No 77‑344, p 274.

When the General Assembly is not in session the Governor has the power to fill appointed positions requiring the consent of the Senate, with the terms of these appointed positions extending until the adjournment of the next session of the General Assembly. 1974‑75 Op Atty Gen, No 4180, p 234.

And the appointee holds office until next general election. A person appointed by the Governor to fill an unexpired term of clerk of court holds office until next general election for clerks of court. 1965‑66 Op Atty Gen, No 1999, p 58.

The only method provided by law for filling an unexpired term for clerk of court is by appointment by the Governor. 1965‑66 Op Atty Gen, No 2101, p 206.

How vacancies created in offices, etc. When a member of the county board of directors of Lancaster County dies after his election but before he takes office on January first, a vacancy is created in such office which must be filled by the Governor until the next general election pursuant to Code 1962 Section 1‑122 and this section [Code 1962 Section 14‑302]. 1965‑66 Op Atty Gen, No 2209, p 353.

Code 1962 Section 15‑407 and this section [Code 1962 Section 14‑302] should be read together. 1962‑63 Op Atty Gen, No 1606, p 190.

A judge of probate is a county officer, and therefore comes within the scope of this section [Code 1962 Section 14‑302]. 1962‑63 Op Atty Gen, No 1606, p 190.

The Governor has authority to fill a vacancy in the office of probate judge during a recess of the Senate and such appointment is for the unexpired term. 1962‑63 Op Atty Gen, No 1606, p 190.

NOTES OF DECISIONS

In general 1

1. In general

But he can fill a vacancy occurring during a recess with respect to the office of magistrate; the statutory authority therefor being expressly conferred. State ex rel. Lyon v Bowden (1912) 92 SC 393, 75 SE 866. State ex rel. Lyon v Whitten (1912) 92 SC 409, 75 SE 880. Heyward v Long (1935) 178 SC 351, 183 SE 145, 114 ALR 1130.

Vacancies in the office of sheriff and of county clerk cannot be filled by election until the next general election for such offices. The former provision in this section [Code 1962 Section 14‑302] providing for filling such vacancies at the next biennial general election for the unexpired term was held unconstitutional. See Privette v Grinnell (1939) 191 SC 376, 4 SE2d 305. Limehouse v Blackwell (1939) 190 SC 122, 2 SE2d 483. Cannon v Sligh (1933) 170 SC 45, 169 SE 712.

How vacancies created in offices of county directors. The long‑continued failure of a majority, including the Senator of the York County legislative delegation, to recommend persons for appointment as members of the county board of directors, pursuant to the terms of the York County Government Act, created vacancies in the offices of county directors and gave rise to the power of the Governor to appoint under the general laws, this section [Code 1962 Section 14‑302] and Code 1962 Section 1‑122. Bradford v. Byrnes (S.C. 1952) 221 S.C. 255, 70 S.E.2d 228.

Nor in office of State Highway Commission. Heyward v. Long (S.C. 1935) 178 S.C. 351, 183 S.E. 145, 114 A.L.R. 1130.

The Governor cannot fill a vacancy in the office of the judge of probate where the unexpired term exceeds one year. Whitmire v. Langston (S.C. 1879) 11 S.C. 381. Judges 8

**SECTION 4‑11‑30.** Recommendation of certain legislative delegations as to appointment; procedures.

 In all cases in which the Governor is required to appoint any person to any position created by statute in any county of this State having a population of between 101,060 and 117,000, as shown by the United States census of 1930, upon the recommendation of a certain number or proportion of the county legislative delegation from such county or by a certain proportion of the House delegation and the Senator of such county, as the case may be, the Governor shall make such appointments within ten days from the date of the filing in his office of such recommendation signed by the requisite number of members of the House and Senate as may be required under the terms of the particular statute relating to that particular position. Upon the failure of the Governor to make any such appointment and certify the same immediately to the Secretary of State within the time limit herein provided, such recommendation so signed and filed in the office of the Governor shall of itself, automatically as a matter of law, immediately operate as an effectual appointment of the person so recommended, having the same legal force and effect as though the Governor himself had made the appointment, and thereupon the Secretary of State shall immediately, upon the expiration of said ten‑day period, issue to the person so appointed a commission in the usual form showing such appointment and deliver it to the appointee, who shall upon production thereof be entitled to take over the office or other position to which he has been appointed, and any person in possession thereof shall forthwith surrender the same to him, together with all records and property relating thereto.

HISTORY: 1962 Code Section 14‑303; 1952 Code Section 14‑303; 1942 Code Section 3095‑1; 1937 (40) 609.

LIBRARY REFERENCES

20 C.J.S., Counties Section 101.

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 4‑11‑40.** Removing county officer; filling vacancy.

 Any county officer who is guilty of misconduct or persistent neglect of duty in office or any person who persists in holding any county office to which he has been appointed or elected but the duties of which he has not the capacity to properly discharge shall, upon indictment and true bill after warrant or after presentment of a grand jury and indictment and true bill thereon, be tried as for misdemeanor in office, and upon his conviction the office shall be declared vacant, and the sentence shall be removal of defendant from office. The vacancy shall be filled as when a vacancy occurs by death or resignation.

HISTORY: 1962 Code Section 14‑304; 1952 Code Section 14‑304; 1942 Code Section 1515; 1932 Code Section 1515; Cr. C. ‘22 Section 463; Cr. C. ‘12 Section 538; Cr. C. ‘02 Section 381; 1897 (22) 423.

CROSS REFERENCES

The provisions relating to the Governor’s powers of appointing and removing county officers, see Section 1‑3‑220.

LIBRARY REFERENCES

20 C.J.S., Counties Section 108.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 52, Dismissal.

NOTES OF DECISIONS

In general 1

1. In general

And it applies only to officers elected by the people or originally appointed for full term. State v. Sanders (S.C. 1920) 118 S.C. 498, 110 S.E. 808.

But not to officers appointed by Governor to fill vacancies. In the light of Code 1962 Section 1‑122, this section [Code 1962 Section 14‑304] is not applicable to county officers appointed by the Governor to fill vacancies, which offices may be removed by him for cause. State v. Sanders (S.C. 1920) 118 S.C. 498, 110 S.E. 808.

Cited in State v. Elliott (S.C. 1913) 94 S.C. 35, 77 S.E. 728.

Section supersedes Governor’s common‑law power of removal. It seems this section [Code 1962 Section 14‑304] supersedes any common‑law power of removal at the will of the executive, if without this section [Code 1962 Section 14‑304] such power would have existed. McDowell v. Burnett (S.C. 1912) 92 S.C. 469, 75 S.E. 873.

**SECTION 4‑11‑50.** Each county shall have farm and home demonstration agents.

 The extension service of Clemson University shall place at least one farm and one home demonstration agent in each county in this State, subject to confirmation by a majority of the county delegation, such agents to be employed as at present and payment of their salaries to be made through the treasurer of the extension service as provided for the payment of that portion of the salaries of such agents contributed by the State and Federal governments.

 In Berkeley County, appointments made pursuant to this section are governed by the provisions of Act 159 of 1995.

 In Dorchester County, appointments made pursuant to this section are governed by the provisions of Act 512 of 1996.

HISTORY: 1962 Code Section 14‑306; 1952 Code Section 14‑306; 1942 Code Section 5806‑11; 1932 Code Section 5773; 1929 (36) 1053.

Editor’s Note

By a Ordinance No. 96‑5‑15, dated October 2, 1996, the Berkeley County Council has notified the Code Commissioner that it accepts the responsibility and authority for making the appointments provided in Act 159 of 1995 which were formerly made by the Berkeley County Legislative Delegation pursuant to the authority of this section.

By Resolution 96‑07, dated July 15, 1996, the Dorchester County Council has notified the Code Commissioner that it accepts the responsibility and authority for making the appointments provided in Act 512 of 1996 which were formerly made by the Dorchester County Legislative Delegation pursuant to the authority of this section.

CROSS REFERENCES

Change of name of The Clemson Agricultural College of South Carolina to Clemson University, see Section 59‑119‑30.

Attorney General’s Opinions

Clemson University may not unilaterally discontinue the Clemson Extension Service. S.C. Op.Atty.Gen. (Dec. 15, 2010) 2010 WL 5578964.

**SECTION 4‑11‑60.** County officers shall keep records of moneys received or due as pay for services; violations.

 Each county officer shall be required to purchase and keep in his office, open to public inspection during office hours, a book in which shall be kept an itemized account of all moneys received by or due him, whether received by him or due to him as salary, fees or costs or in any other manner, as pay for him for his services by virtue of his office; provided, that nothing herein contained shall be construed to require any officer to demand the payment of his fees and costs in advance. Any county officer neglecting or refusing to comply with any of the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than fifty nor more than two hundred dollars or imprisoned in the county jail not less than two nor more than six months, either or both at the discretion of the court.

HISTORY: 1962 Code Section 14‑307; 1952 Code Section 14‑307; 1942 Code Section 3078; 1932 Code Sections 1514, 3078; Civ. C. ‘22 Section 765; Civ. C. ‘12 Section 681; Civ. C. ‘02 Sections 611, 612; Cr. C. ‘22 Section 462; Cr. C. ‘12 Section 537; Cr. C. ‘02 Section 380; 1897 (22) 458; 1898 (22) 742; 1902 (23) 1162; 1909 (26) 32; 1916 (29) 762; 1920 (31) 1148, 1149; 1921 (32) 179.

**SECTION 4‑11‑65.** Purchase of fidelity bond for certain officials.

 (A) When bonding of county officials or employees is statutorily required, the governing body of a county may purchase a fidelity bond to cover all or a portion of the county officials and employees. A fidelity bond may be used instead of specific statutory bond requirements including, but not limited to, those found in Sections 12‑39‑10, 12‑45‑10, 14‑17‑40, 14‑17‑60, 14‑17‑350, 14‑23‑1050, 17‑5‑20, 17‑5‑70, 22‑1‑150, 22‑1‑160, 23‑11‑30, and 23‑13‑20. Any officials or employees not covered by a fidelity bond must be bonded as required by statute.

 (B) The purchase of a fidelity bond as provided in subsection (A) or the replacement of an existing bond with a fidelity bond covering one or more county officials or employees must be evidenced by passage of a resolution by the county’s governing body. A fidelity bond must meet or exceed the minimum value of the bond required by the statute or statutes for the covered officials or employees.

HISTORY: 2005 Act No. 58, Section 1, eff May 16, 2005.

**SECTION 4‑11‑70.** County officers shall transmit copies of financial records to certain persons.

 At the close of each fiscal year, when so required by the Senator from such county or a majority of the members of the House of Representatives from the county, each county officer shall transmit an itemized copy of such account, under oath, to the office of the county supervisor or to the members of the governing body in any county where there is no county supervisor, and shall transmit a copy thereof to the Senator and each member of the House of Representatives from the county on or before the tenth day of January next ensuing.

HISTORY: 1962 Code Section 14‑308; 1952 Code Section 14‑308; 1942 Code Section 3078; 1932 Code Sections 1514, 3078; Civ. C. ‘22 Section 765; Civ. C. ‘12 Section 681; Civ. C. ‘02 Sections 611, 612; Cr. C. ‘22 Section 462; Cr. C. ‘12 Section 537; Cr. C. ‘02 Section 380; 1897 (22) 458; 1898 (22) 742; 1902 (23) 1162; 1909 (26) 32; 1916 (29) 762; 1920 (31) 1148, 1149; 1921 (32) 179.

LIBRARY REFERENCES

20 C.J.S., Counties Section 150.

**SECTION 4‑11‑80.** County supervisor shall keep account of county officers’ financial records.

 The county supervisor, in addition to other books kept in his office, shall keep a separate book in which he shall enter the total amount of each account so furnished, opposite the name of the officer furnishing the account, and shall file the account in his office, as other county records are kept.

HISTORY: 1962 Code Section 14‑309; 1952 Code Section 14‑309; 1942 Code Section 3078; 1932 Code Sections 1514, 3078; Civ. C. ‘22 Section 765; Civ. C. ‘12 Section 681; Civ. C. ‘02 Sections 611, 612; Cr. C. ‘22 Section 462; Cr. C. ‘12 Section 537; Cr. C. ‘02 Section 380; 1897 (22) 458; 1898 (22) 742; 1902 (23) 1162; 1909 (26) 32; 1916 (29) 762; 1920 (31) 1148, 1149; 1921 (32) 179.

LIBRARY REFERENCES

20 C.J.S., Counties Section 150.

**SECTION 4‑11‑90.** Repealed by 1992 Act No. 264, Section 2, eff February 19, 1992.

Editor’s Note

Former Section 4‑11‑90 was entitled “County officers shall pay over certain unclaimed funds to county treasurers” and was derived from 1962 Code Section 14‑311; 1952 Code Section 14‑311; 1943 (43) 274.

**SECTION 4‑11‑100.** Transfer and disposition of certain unclaimed funds which have been invested or loaned out.

 Any of such funds which may be invested or loaned out for the benefit of those who cannot be ascertained shall be paid over to the county treasurer as soon as they are collected. Such funds shall be by such treasurers credited to their respective general funds.

HISTORY: 1962 Code Section 14‑312; 1952 Code Section 14‑312; 1943 (43) 274.

**SECTION 4‑11‑110.** Subsequent claim of transferred funds by owner.

 In the event any owner shall establish his right to any of such fund and the same has been accredited by the county treasurer, such fund shall be paid to such owner or claimant by the order of the court of common pleas from the general fund of the county.

HISTORY: 1962 Code Section 14‑313; 1952 Code Section 14‑313; 1943 (43) 274.

**SECTION 4‑11‑120.** County officers shall keep accounts of transferred funds.

 Such officers shall keep accounts of all such funds so paid by each of them respectively to such county treasurers. Such accounts shall show the dates of such payments, the titles of cases or sources from which such funds are derived and the amount so paid over to the said treasurer. Each county treasurer shall open and keep a separate account with each officer paying such funds to him of all funds so received by him from such officers. Such accounts shall show the dates of such payments and the titles of cases or sources from which funds are derived. The accounts shall be open to public inspection at any time during officer hours.

HISTORY: 1962 Code Section 14‑314; 1952 Code Section 14‑314; 1943 (43) 274.

**SECTION 4‑11‑130.** Disbursing officers shall not exceed or transfer appropriations; violations; suspension by Governor.

 It is unlawful for an officer, clerk, or other person charged with disbursements of county funds appropriated by the General Assembly to exceed the amounts and purposes stated in the appropriation or to change or shift appropriations from one item to another. Transfers may be authorized by the General Assembly in any county appropriation act. An officer, clerk, or other person violating the provisions of this section is guilty of malfeasance in office, and the Governor may suspend the officer and shall investigate his conduct. Upon conviction, the person is guilty of a misdemeanor and must be fined in the discretion of the court or imprisoned not more than three years.

HISTORY: 1962 Code Section 14‑315; 1952 Code Section 14‑315; 1942 Code Sections 1592, 3070, 3071; 1932 Code Sections 1592, 3070, 3071; Civ. C. ‘22 Sections 757, 758; Cr. C. ‘22 Section 557; 1921 (32) 117; 1993 Act No. 184 Section 128, eff January 1, 1994.

Effect of Amendment

The 1993 amendment rewrote this section so as to change the maximum term of imprisonment to conform to the classification established for each offense.

CROSS REFERENCES

Contracts in excess of appropriations, see Section 11‑1‑40.

Disbursements of State funds in excess of appropriations, see Section 11‑9‑20.

NOTES OF DECISIONS

In general 1

1. In general

Applied in McKown v. Daniel (S.C. 1950) 217 S.C. 510, 61 S.E.2d 163.

**SECTION 4‑11‑140.** Intermingling official funds with private funds prohibited; violations; intent of section.

 It shall be unlawful for any county official to deposit public or trust funds with individual or private funds in any bank or other depository in this State or for any such officer to withdraw any such public or trust funds or any part thereof for any purpose other than that for which they were received and deposited. Any county official violating this provision of law shall be subject to a fine or imprisonment at the discretion of the court and in addition shall be subject to removal from office for malfeasance in office. This section is intended to require all county officers to carry a county fund not required to be deposited by them in the State Treasury under the provisions of Section 11‑13‑110 in a separate account to be known as public or trust funds without allowing any private funds to be deposited in such account.

HISTORY: 1962 Code Section 14‑316; 1952 Code Section 14‑316; 1942 Code Section 3184; 1932 Code Section 3184; 1930 (36) 1250.

CROSS REFERENCES

Intermingling official State funds with private funds, see Section 11‑13‑100.

**SECTION 4‑11‑150.** Consequences of failure to remit funds.

 Any county officer who neglects or fails to remit to the State Treasurer as required by law shall become responsible on his official bond for any loss the State may sustain by reason of such neglect or failure to remit.

HISTORY: 1962 Code Section 14‑317; 1952 Code Section 14‑317; 1942 Code Section 2200; 1932 Code Section 2200; 1925 (34) 273; 1926 (34) 1049; 1952 (47) 1892; 1955 (49) 151.

CROSS REFERENCES

Collecting and remitting of State taxes by county treasurers, see Section 11‑13‑120.

Duties of State Treasurer with respect to defaulting county treasurers, see Sections 11‑5‑50 et seq.

**SECTION 4‑11‑160.** Charging off of losses in county offices with approval of county council.

 Whenever there shall occur in any county office in this State a loss of public funds arising through defalcation, bank deposits, theft or otherwise, the county treasurer or other officer having custody of the records in which such loss appears may charge off such loss with the approval of the county council, but, in the case of bank losses, only if the bank shall have been liquidated and the receiver or other agent discharged and, in the case of any other loss, only if the sums recoverable by bond or otherwise shall have been applied against the loss and the remaining sum definitely ascertained to be irrecoverable.

HISTORY: 1962 Code Section 14‑317.1; 1952 Code Section 14‑317.1; 1942 Code Section 2805; 1933 (38) 491; 1982 Act No. 332.

**SECTION 4‑11‑170.** Extra allowance to salaried officers forbidden.

 No member of the governing body of any county shall vote for an extra allowance to any person who is paid by salary, nor shall the treasurer of any county knowingly pay to any such person any extra allowance.

HISTORY: 1962 Code Section 14‑318; 1952 Code Section 14‑318; 1942 Code Section 3879; 1932 Code Section 3879; Civ. C. ‘22 Section 1120; Civ. C. ‘12 Section 998; Civ. C. ‘02 Section 813; G. S. 634; R. S. 700; 1875 (15) 996; 1893 (21) 481.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 38, Emoluments of Office, Perquisites, and Bonuses.

Attorney General’s Opinions

A clerk of court cannot use the bail bondsmen fees to pay his employees a “small moral[e] improvement incentive”; a clerk of court cannot pay an employee compensation which is greater than the amount that the employee agreed to work for under contract or that is greater than the employee’s salary. S.C. Op.Atty.Gen. (June 5, 2017) 2017 WL 2601033.

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.

Section 4‑11‑170, which provides that no member of county council shall vote for an extra allowance to any person who is “paid by salary,” would include within the statutory prohibition an employee of a county paid pursuant to contract. 1989 Op Atty Gen, No. 89‑52, p 134.

NOTES OF DECISIONS

In general 1

1. In general

Applied in Richland County v. Owens (S.C. 1912) 92 S.C. 329, 75 S.E. 549.

**SECTION 4‑11‑265.** Budget authority of governing body of special purpose district; referenda.

 (A) The legislative delegation of any county, including the Senator, may, by majority vote at a duly called meeting, initiate a referendum in that county to determine the wishes of the registered electors residing in the geographical areas of all special purpose and public service districts (districts) with regard to budgetary powers and election of the governing bodies of the districts.

 (B) The referendum must be conducted only at the time of a general election. Ballots must be printed with the following questions printed on them:

|  |  |
| --- | --- |
|  |  |
| [] | Shall the governing body of (insert name) district be |
|   | elected and have fiscal autonomy to approve a budget |
|   | and instruct the local auditor to fix a millage sufficient to |
|   | raise the budget amount? |
| [] | Shall the governing body of (insert name) district be |
|   | appointed by and have its annual budget subject to final |
|   | approval of the governing body of the county in which it |
|   | is located? Mark one. |

 (C) The county election commission shall count the ballots and certify the results to the county legislative delegation.

 (D)(1) In those districts in which the registered electors vote to have elected governing bodies, the governing body of each district shall hold an election at the time of the next general election after certification of the results of the referendum by the county election commission. Notice of the election must be published in a newspaper of general circulation in the district which shall contain detailed information concerning the election. The notice must be published not less than five nor more than fifteen days before the date of the election. All members of the governing bodies must be elected in nonpartisan elections for four‑year terms, except of those initially elected one‑half minus one in the case of odd‑numbered governing bodies and one‑half in the case of even‑numbered governing bodies must be elected for terms of two years. At the expiration of the two‑year terms, members elected for those terms must be elected for terms of four years.

 (2) Any governing body of a special purpose district may decide that its members may be elected from the district at large, at large with residency requirement, or from single member election districts.

 (3) To place the name of a candidate on the ballot, qualified electors of the district shall file with the county election commission, not less than sixty days before the date of the election, a petition which shall contain the names of qualified electors of a number equal to not less than five hundred qualified electors of the district or five percent of the total number of electors of the district, whichever is the lesser.

 (4) The number of members elected under the provisions of this subsection must be the same number as provided by law for the number of members for each district.

 (E) In those districts in which the registered electors vote to have appointed district governing bodies, the governing body of the county in which the district is located is vested with power to appoint the governing body of that district and shall exercise the budgetary approval process over the budget of the district.

 (F) The provisions of this section apply only to districts existing prior to March 7, 1973, but not to any district whose governing body is elected by the qualified electors and which governing body has the authority to levy taxes.

HISTORY: 1984 Act No. 512, Part II, Section 70.

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.

NOTES OF DECISIONS

In general 1

1. In general

Section 70, Part II of Act No. 512 of the General Appropriations Act of 1984, codified as Section 4‑11‑265, violates Article III, Section 17 of the South Carolina Constitution and is invalid. Article III requires that every Act or Resolution having the force of law must relate to one subject only and that such subject must be expressed in the title of the Act; although the subject matter of Section 70 is expressed in the title of the 1984 Appropriations Act, its subject matter, providing that voters residing in special purpose districts may, by referendum, decide between 2 methods of electing members of District Boards, is not related to raising and spending tax monies and is therefore improperly included in the Appropriations Act. Ex Parte Georgetown County Water and Sewer Dist. (S.C. 1985) 284 S.C. 466, 327 S.E.2d 654.

**SECTION 4‑11‑290.** Dissolution of special purpose districts; procedures; disposition of assets.

 (A) For purposes of this section, “special purpose district” or “district” means any district created by or pursuant to an act of the General Assembly before March 7, 1973, and to which has been committed before March 7, 1973, any governmental function, and includes those districts created by special legislation as well as those districts created by virtue of referenda held pursuant to general legislation.

 (B) No special purpose district may be dissolved pursuant to this section if any one or more of the following conditions exists:

 (1) the district is presently providing a governmental service within its boundaries;

 (2) the district has outstanding general obligation indebtedness;

 (3) the district has outstanding indebtedness payable from revenues derived from the provision of one or more governmental services and neither (i) the indebtedness has been assumed, with the consent of the holder of the indebtedness, by a political subdivision of the State of South Carolina that is authorized by law to provide the governmental services and that has agreed to take title to all necessary assets of the system from which revenues are derived, nor (ii) provision for payment or defeasance of the indebtedness has been made;

 (4) a receiver has been appointed to manage the affairs of the district or application has been made for the appointment of a receiver;

 (5) the district has provided a governmental service within two years of the date of the petition and has formally budgeted funds to resume the provision of a governmental service within the present or succeeding fiscal year; or

 (6) the governing body of a county in which the district is located objects to the dissolution of the district.

 (C) An individual residing or owning property within the boundaries of a special purpose district may petition the Secretary of State to dissolve the district through the issuance of an order of dissolution.

 (D) A petition for dissolution of a special purpose district must contain the following items:

 (1) a description of the governmental services which the district is authorized by law to provide;

 (2) a statement that the district is not presently providing any authorized governmental service;

 (3) identification of the special legislation or the general legislation pursuant to which the district was created. If the district was created pursuant to general legislation, the petition must state the date upon which the approving referendum was held;

 (4) a general description of the boundaries of the district. If the boundaries of the district have at any time been enlarged or diminished pursuant to general laws, the date or dates of the action must be stated;

 (5) a statement of the reason or reasons for which dissolution of the district is sought;

 (6) if indebtedness is to be assumed and assets transferred to another political subdivision of the State of South Carolina as provided for in subsection (B)(3), evidence of official action by the governing body of the political subdivision authorizing the assumption of indebtedness and acceptance of assets;

 (7) if provision for the payment or defeasance of indebtedness is to be made as provided for in subsection (B)(3), evidence of the provision for the payment or defeasance of indebtedness.

 (E) The petition must be filed with the clerk of court of each county in which the district is located, and a certified copy of the petition shall within ten days after that time be filed with the Secretary of State.

 (F) The Secretary of State shall, upon receipt of a petition, commence proceedings as set forth in this subsection for the purpose of investigating the matters set forth in the petition and determining whether a district must be dissolved.

 (1) Within twenty days of the receipt of a petition, the Secretary of State shall serve upon the Governor, the State Treasurer, and the governing bodies of the county or counties in which the district is located a copy of the petition, together with a copy of the notice of review authorized by subsection (F)(2). The Governor, the State Treasurer, and the county governing bodies may comment upon the petition, or in the case of county governing bodies, interpose an objection to dissolution of the district, by serving a return to the petition setting forth the comments or grounds for the objection within forty days of the service of the petition.

 (2) Within twenty days of the receipt of a petition, the Secretary of State must have published in a newspaper of general circulation in each county in which the district is located once a week for three successive weeks a notice of review which must state:

 (a) the name of the district and the boundaries of it;

 (b) the statutory authorization for the existence of the district and a brief description of the governmental powers granted by the authorization;

 (c) the date upon which the petition was received by the Secretary of State;

 (d) that the petition is available for inspection at the office of the clerks of court in each county in which the district is located;

 (e) that the Secretary of State is reviewing the matters set forth in the petition and may undertake to dissolve the district if the matters are found to be true;

 (f) the names of the persons shown in the records of the Secretary of State, or, in the case of a district with an elected governing body, the county election commission, who constitute the most recently appointed or elected governing body of the district. In the case of an appointed governing body, there also must be identified the official or officials charged with appointing the members of the governing body; and

 (g) that persons wishing to comment upon the dissolution of the district may file a return to the petition within twenty days of the last publication of the notice.

 (3) A copy of the petition and the notice of review must be served, in the manner provided by law for service of process upon individuals, upon the persons identified as members of the governing body of the district in subsection (F)(2)(f) and mailed to the last known address, if any, of the office of the governing body.

 (G) Upon the expiration of the time periods set forth in subsections (F)(1) and (2), the filing of a return to the petition, the Secretary of State shall determine whether the district must be dissolved. The district must be dissolved if the procedures established by this section have been met and if none of the conditions set forth in subsection (B) are found by the Secretary of State to exist. The findings of the Secretary of State must be published in an order of dissolution. The order of dissolution must state:

 (1) the name of the district and the boundaries of it;

 (2) the statutory authorization for the existence of the district and a brief description of the governmental powers granted by such authorization;

 (3) the date upon which the petition was received by the Secretary of State;

 (4) that the petition has been served upon the Governor, the State Treasurer, and the governing bodies of each county in which the district is located;

 (5) that the notice of review provided for by subsection (F)(2) was published once a week for three successive weeks in a newspaper of general circulation in each county in which the district is located;

 (6) that the persons shown in the records of the Secretary of State, or, in the case of a district with an elected governing body, the county election commission, who constitute the most recently appointed or elected governing body of the district, were served with a copy of the petition and the notice of review; and

 (7) that the Secretary of State has caused investigation to be made and has determined that the district must be dissolved pursuant to this act.

 (H)(1) The order of dissolution must be filed in the office of the clerk of court in each county in which the district is located. The Secretary of State shall have published once a week for three successive weeks in a newspaper of general circulation in each county in which the district is located a notice of dissolution, which must state:

 (a) the date of the filing of the petition;

 (b) the statutory authorization for the existence of the district and a brief description of the governmental powers granted by the authorization and the boundaries of the district;

 (c) that the Secretary of State has determined that the district must be dissolved pursuant to this section;

 (d) that the order of dissolution is available for inspection in the office of the clerk of court of each county in which the district is located; and

 (e) that the order of dissolution will become final on the twenty‑first day following the final publication of the notice of dissolution.

 (2) The notice of dissolution also must be served upon the Governor and the State Treasurer in the manner provided by law for service of process upon individuals, upon the persons identified as members of the governing body of the district in subsection (F)(2)(f) and be mailed to the last known address, if any, of the office of such governing body.

 (3) Any resident or landowner of the district, the Governor, the State Treasurer, or a county governing body may, by action de novo instituted in the court of common pleas in a county in which the district is located, within twenty days following the publication of the notice of dissolution, but not afterwards, challenge the action of the Secretary of State. The scope of any action must be limited to the authorization of the Secretary of State to issue the order of dissolution in accordance with the requirements of this chapter or of the Constitution of this State.

 (I) In the event a district is located in more than one county and the Secretary of State declines to issue an order of dissolution solely on the grounds that the governing bodies of one or more of such counties object to dissolution, the governing body of any county which does not object to dissolution is authorized to diminish the boundaries of the district so that it no longer includes any portion of that county. In diminishing the boundaries of a district, the governing body shall utilize the procedure set forth in Article 3, Chapter 11, Title 6. No consent or action by the governing bodies of other counties in which the district is located is required.

 (J) In the event the district being dissolved has title to real or personal assets, those assets shall be disposed of as provided in this subsection.

 (1) To the extent that the district is authorized by the act creating or establishing the district to provide services and one or more of those services are as of the date of dissolution provided by another political subdivision of the State of South Carolina, the Secretary of State:

 (a) must convey to such political subdivision:

 (i) any and all assets of the district necessary, useful, or otherwise related to the provision of the service or services by the political subdivision; and

 (ii) any assets then being used by the political subdivision to provide the service or services to the political subdivision; and

 (b) must execute and deliver any deeds, bills of sale, or other evidence of conveyance of the property as may be required by law to make the asset conveyance effective.

 (2) In the event that a political subdivision has assumed indebtedness of the district being dissolved as provided in subsection (B)(3), all assets securing such indebtedness must be conveyed to the political subdivision in accordance with this subsection. The Secretary of State is authorized to convey by his signature title to any and all assets as provided in this subsection, and his signature on any deed, bill of sale, or other instrument of conveyance shall be effective and binding for that purpose.

 (3) All other assets of the district shall escheat to the State and shall be disposed of in accordance with Chapter 27 of Title 19.

HISTORY: 1992 Act No. 516, Section 5(B), eff September 2, 1992; 2006 Act No. 343, Section 1, eff June 10, 2006.

Editor’s Note

1992 Act No. 516 Section 1, effective September 2, 1992, provides as follows:

“SECTION 1. Act 926 of 1974 provides a vehicle for the consolidation and enlargement of special purpose districts. The consolidation of special purpose districts which do not share identical powers, or the enlargement of a single special purpose district authorized to provide multiple services, may result in an overlap in service areas with a separate political subdivision. According to the decision of the South Carolina Supreme Court in North Carolina Electrical Membership Corp. v. White, 301 S.C. 274, 391 S.E.2d 751 (1990), these overlapping service areas are forbidden. The General Assembly adopts this act to provide that, in order to avoid this type of overlap, the governing body of a county, as an alternative to diminishing the boundaries of the overlapping political subdivision, may limit the provision of service by the consolidated or enlarged special purpose district so that there is no overlap in authorized service areas.”

1992 Act No. 516 Section 5(A), effective September 2, 1992, provides as follows:

“SECTION 5. (A) As incident to the adoption of this section, the General Assembly finds that it has created numerous special purpose districts to provide one or more governmental services within specified localities. Additional special purpose districts have been created as a result of referenda held pursuant to authorizing legislation. While many of these special purpose districts continue to provide governmental services and otherwise exercise the authority granted them pursuant to their respective enabling legislation, there exists a number of special purpose districts which have ceased to provide governmental services, or which have never provided any service.

“The existence of these nonfunctioning special purpose districts has created inefficiencies in the provision of governmental services to the people of this State. The General Assembly adopts this section in order to provide a means in which special purpose districts which do not provide any governmental service, and which have made no provision for providing the service, may be dissolved. It is the intent of the General Assembly that dissolution of a special purpose district is mandatory if the conditions and procedures set forth in this section are met.”

Effect of Amendment

The 2006 amendment rewrote subsection (B); in subsection (D), added subparagraphs (6) and (7) relating to indebtedness; and added subsection (J) relating to disposition of assets.

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.