

**HOME RULE HANDBOOK
FOR
COUNTY GOVERNMENT**

2008 SUPPLEMENT



**South Carolina
Association of Counties**

2008 REVISIONS

FILE WITH THE 2004 HANDBOOK

PREFACE

This Supplement should be stored with the *2004 Home Rule Handbook for County Government*. The 2008 Supplement replaces the 2007 Supplement, which should be discarded. Any time the *Home Rule Handbook for County Government* is consulted, this volume must be checked for amendments to the statutes, case law and Attorney General opinions interpreting the statutes.

This supplement includes summaries of Attorney General's opinions interpreting statutes which constitute the Home Rule Act. It also includes case law interpreting these statutes and cross-references to other areas of the code.

This publication is not designed to be the final word on the law affecting county government structure and operations. The case notes, cross-references, and summaries of Attorney General opinions are not a complete source of the law which may affect the answer to a question you may have. It is important to consult your county attorney when you have a question regarding the law.

This publication is intended to give you a readily available reference to begin your search for information. Should you need assistance, the South Carolina Association of Counties staff is available to help all county officials and employees with any questions which might arise regarding the Home Rule Act or any other matter which affects county government. Whether the question involves a legal interpretation, research, or proposed legislation, the staff is here to serve the counties of our state. You may call the Association of Counties office at 1-800-922-6081, or email us at SCAC@SCAC.state.sc.us.

TABLE OF CONTENTS

SECTION	SUBJECT	PAGE
PART I	PROVISIONS THAT APPLY TO ALL FORMS OF GOVERNMENT	1
ARTICLE 1	GENERAL PROVISIONS	1
4-9-10	Choosing the Form of Government	1
4-9-25	General Police Power	1
4-9-30	Specific Powers Granted	3
4-9-30(4)	Specific Powers Granted	4
4-9-30(5)	Specific Powers Granted	4
4-9-30(6)	Specific Powers Granted	5
4-9-30(7)	Specific Powers Granted	6
4-9-30(9)	Specific Powers Granted	6
4-9-33	County Police Department Creation	7
4-9-35	County Public Library System	7
4-9-38	Status of Donations for Tax Purposes	7
4-9-40	Providing Services Within Municipalities	8
4-9-60	Election or Appointment of Auditor and Treasurer	8
4-9-70	Public School Education and County Council	9
4-9-90	County Council Elections	9
4-9-120	Procedures for Adoption of Ordinances	9
4-9-140	Budgets, Appropriations and Taxes	10
4-9-150	Audits of County Records	11

PART II	PROVISIONS THAT APPLY TO INDIVIDUAL FORMS OF GOVERNMENT	13
ARTICLE 7	COUNCIL-ADMINISTRATOR FORM OF GOVERNMENT	13
4-9-610	County Council Organizational Requirements	13
4-9-620	Employment and Removal of Administrators	13
4-9-630	Powers and Duties of Administrators	14

PART I.

PROVISIONS THAT APPLY TO ALL FORMS OF GOVERNMENT

P. 5 SECTION 4-9-10: CHOOSING THE FORM OF GOVERNMENT

ATTORNEY GENERAL'S OPINIONS

Upon approval of the change in form of government by the Justice Department, and upon the necessary action being taken by county council to effectuate the change in the form of government, the new form of government immediately goes into effect. Consistent with §4-9-10(e) and Op. S.C. Atty. Gen., No. 88-36, council members not subject to re-election in the election in 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. Additional county council positions authorized by the referendum would be filled by special election. (2005 WL 100927 (S.C.A.G.)).

P. 7 SECTION 4-9-25: GENERAL POLICE POWER

CASE NOTES

The Court held that the portion of the Town of Sullivan's Island recently enacted smoking ordinance imposing a \$500 fine and/or 30 days in jail was invalid in that it imposed a criminal penalty for a violation of the ordinance. The Court, in *Foothills Brewing v. City of Greenville*, had previously ruled that a local government may criminalize indoor smoking, but only to the extent consistent with State law. A violation of the Clean Indoor Air Act (§44-95-50) is a misdemeanor punishable by a fine of \$25 to \$100. Therefore, any penalty imposed by a local government greater than imposed by the Clean Indoor Air Act would be inconsistent with State law and invalid. *Beachfront Entertainment v. Town of Sullivan's Island*, 2008 WL 4109723.

Under home rule, local governments are granted broad powers from the State to enact regulations, resolutions, and ordinances to preserve health, peace and good government. Pursuant to §4-9-30(14) local laws must not be inconsistent with the Constitution and general law of this State. A city ordinance prohibiting smoking in public places and levying a non-criminal fine does not conflict with the Clean Indoor Air Act (§44-95-20), and is therefore valid. *Foothills Brewing v. City of Greenville*, 377 S.C.355, 660 S.E.2d 264 (2008).

A competitor argued that the Sumter County procurement ordinance's exemption from competitive bid requirements for contracts that are specifically approved by county ordinance violates the SC Consolidated Procurement Code. The Court stated that local governments should be afforded a reasonable degree of latitude in devising their own procurement ordinances and

procedures. *Glasscock Company, Inc. v. Sumter County*, 361 S.C. 483, 604 S.E.2d 718 (2004).

Georgetown County did not have authority to pass ordinances preventing gambling day cruises out of the county, given that the Johnson Act plainly indicated only the state could act to prohibit gambling day cruises, and at the time the ordinances were passed, South Carolina had not enacted a statute prohibiting gambling day cruises. *Palmetto Princess, LLC v. Georgetown County*, 369 S.C. 34, 631 S.E.2d 68 (2006).

The State Ports Authority (SPA), in a suit against Jasper County, claimed SPA had the exclusive authority to develop a port terminal on the Savannah River. Jasper County argued that under §4-9-25, its proposed terminal is valid because the terminal will promote the general welfare of the county and enhance the county's economy. The Court found that Jasper County is not preempted from the field of port development on the Savannah River because the General Assembly has not manifested an intent to preempt the passage of local laws. Jasper County has the power and authority to create a county owned public marine terminal on the Savannah River. *South Carolina State Ports Authority v. Jasper County*, 368 S.C. 388, 629 S.E.2d 624 (2006).

Editor's note: The General Assembly by Act 56 of 2007 (R.35, H.3505) required by statute that the SPA conclude its condemnation proceedings in Jasper County and establish a comprehensive plan for the development of the new port terminal.

ATTORNEY GENERAL'S OPINIONS

Litter control and regulation of nuisances fall with a county's authority, pursuant to §4-9-25, to enact ordinances affecting health and general welfare. Such ordinances are regulation of individual behaviors rather than land use therefore, they would be applicable countywide rather than only in areas covered by the county zoning ordinance. (2008 WL 2614993 (S.C.A.G.)).

Counties, like municipalities, generally have police powers. No municipality may by contract part with the authority delegated it by the State to exercise the police power. As a result, a county would not be authorized to contract with a private security company for law enforcement purposes, even though services, while not police protection, would constitute private security. (2008 WL 1960276 S.C.A.G.)).

Pursuant to §4-9-25, all counties have the authority to enact regulations, not inconsistent with the Constitution and general laws of this State. A County would not be authorized to enact an ordinance making the offense of resisting arrest within the trial jurisdiction of a magistrate or municipal court judge, since the penalties for such offense potentially exceed the limits of those courts. (2007 WL 3244887 (S.C.A.G.)).

Act 290 of 2006, which provides for the regulation of agriculture facilities under state law and DHEC regulations does not violate the Home Rule provisions of the state constitution. The act reaffirms the position that the Legislature retains the right to enact general laws to limit the

authority of counties, including the preemption of counties from further regulation in a particular area. The Legislature must exercise its power of preemption by general law, not local legislation. (2006 WL 1376910 (S.C.A.G.)).

Local governments may not enact ordinances that impose greater or lesser penalties than those established by state law. A county council is not authorized to create an ordinance against speeding and civil penalties and remedies for that violation. The General Assembly has addressed by state law the subject of speeding, the same matter which would be addressed by the proposed ordinance. (2006 WL 422574 (S.C.A.G.)).

P. 17 SECTION 4-9-30: SPECIFIC POWERS GRANTED

ATTORNEY GENERAL'S OPINIONS

Pursuant to §4-9-30, a county could not enact proposed ordinances related to penalties and sentences within the magistrate courts jurisdiction. A charter or ordinance cannot lower or be inconsistent with a standard set by state law. The criminal jurisdiction of a magistrate court extends to offenses with penalties of a fine not exceeding \$500 or imprisonment not exceeding thirty days, or both. Therefore, a county could not enact an ordinance which would increase those penalties. (2008 WL 317749 (S.C.A.G.)).

In §4-9-30, the Legislature afforded specific powers to counties, including the power to make appropriations for functions and operations of the county. The provisions of §4-9-30, when read in conjunction with the Capital Projects Sales Tax (§4-10-300 et. seq.), do not appear to limit a county's ability to appropriate funds to other entities providing water service. A referendum, pursuant to Article VIII, Section 16 of the SC Constitution, would not be required if the county does not use the appropriated funds to construct, purchase or otherwise operate the water system. A referendum would be required if the county itself constructed, owned, or operated the system. (2008 WL 2614989 (S.C.A.G.)).

A county could not adopt, wholesale, the provisions of state laws on animal cruelty into a county ordinance since some provisions of state law provide penalties in excess of the jurisdiction of the magistrate's court. Pursuant to §4-9-30, a county is authorized to enact ordinances and provide penalties for violations thereof, not to exceed the penalties within the jurisdiction of magistrate's courts. (2007 WL 4686598 (S.C.A.G.)).

The Legislature passed §4-9-30 granting the power to assess property and levy ad valorem property taxes and uniform charges. This section provides county government with the option of imposing service charges or user fees upon those who use county services in order to reduce the tax burden which otherwise would be borne by the taxpayers generally. (2006 WL 3199980 (S.C.A.G.)).

P. 18 SECTION 4-9-30(4): SPECIFIC POWERS GRANTED

CASE NOTES

A water and sewer company, possesses an exclusive right to provide water and sewer services within a designated unincorporated area in the county because the county failed to affirmatively respond to the company's notice to provide the services. Once the local government fails to respond within the time period provided for by §33-35-90, the not-for-profit's right to operate in the specified area is exclusive. Williamsburg Rural Water and Sewer Company, Inc. v. Williamsburg County Water and Sewer Authority, 367 S.C. 566, 627 S.E.2d 690 (2006).

P. 18 SECTION 4-9-30(5): SPECIFIC POWERS GRANTED

ATTORNEY GENERAL'S OPINIONS

By its expressed terms, §4-9-30(5) provides counties with additional and supplemental methods for funding improvements. This is consistent with the intent of the drafters of the Home Rule Act to provide county government with the option of imposing service charges or user fees upon those who use county services in order to reduce the tax burden which otherwise would have been borne by taxpayers generally. However, the validity of an ordinance adopting a fire and rescue protection fee of \$.50 per acre for all county residences must be adopted using the specific methodology prescribed by the General Assembly in §6-1-330. (2008 WL 903973 (S.C.A.G.)).

A county ordinance enacted after 1999, adopting a development impact fee for school facility construction would be invalid. While §4-9-30(5)(a) authorizes counties to impose development impact fees, school facilities are not among the enumerated "public facilities" specifically defined by the South Carolina Development Impact Fee Act of 1999 (§6-1-910 et. seq.). If a county enacted an impact fee ordinance including such school facilities, prior to the 1999 passage of the Impact Fee Act, they would be grandfathered by §6-1-1060 until that fee terminates. (2008 WL 608962 (S.C.A.G.)).

Section 4-9-30(5)(e) specifically provides that a county council may by ordinance abolish a special tax district. A county could change by ordinance the composition of a commission where the members of the commission are appointed by county council and the commission and terms were established by ordinance. One council cannot restrict the authority of its successors to amend an ordinance. (2008 WL 1960276 (S.C.A.G.)).

County Council, with some restrictions, has authority to impose impact fees on new development. A county can impose a service charge, as in the situation here, where it is a fair and reasonable alternative to increasing the general property tax, and is imposed upon those for whom the service is rendered.(2006 WL 3199980 (S.C.A.G.)).

Section 4-9-30(5)(a) includes fire protection as a function of a county and includes it among other activities generally considered functions and operations performed by county governments. The statutes contained in Chapter 19 of Title 4 specifically authorize governing bodies to create, operate, and maintain systems for fire protection, and also provide authority for a county to levy

ad valorem taxes in order to accomplish these functions. However, based on §4-9-30(5)(a), providing fire protection services is a general operating purpose. Any increase in the millage rate levied by a county for the purpose of providing fire protection services, whether or not provided pursuant to Chapter 19 of Title 4, is limited by §6-1-320(A), unless the increase is due to one of the exemptions provided under §6-1-320(B). (2007 WL 1934802 (S.C.A.G.)).

The creation of a special tax district to set taxes in the district at a reduced rate, as compared to the county, is not authorized by any constitutional or statutory provision, and would violate Article X, §6 of the state constitution. The services to be rendered by a special tax district must be specified in order to create such a special tax district pursuant to §4-9-30. If residents in a proposed special tax district submit a petition that complies with the requirements of §4-9-30 (5)(a)(I), the county must hold an election allowing all residents of the proposed special tax district to vote to approve the creation of the district. However, if such residents vote to approve the district, the county retains discretion to decide whether or not to enact an ordinance creating the district. (2006 WL 269604 (S.C.A.G.)).

County council has the authority pursuant to §4-9-30 to impose a road maintenance fee, and to appropriate the proceeds of the fee according to ordinance amended and adopted by the county. A fee is valid if the revenue generated is used to benefit the payers, even if the general public benefits; the revenue generated is used only for the specific improvements contemplated; does not exceed the cost of the improvements; and is uniformly imposed on all payers. (2006 WL 2593077 (S.C.A.G.)).

County council possesses broad discretion to maintain a surplus with respect to its road maintenance fee. Such authority includes the power to carry over such funds or revenues generated by the charge from year to year. Any challenge to the council's action carries a heavy burden of proof, and it must be demonstrated in particular that the revenue generated by the fee exceeds the cost of the improvement, or that there is little or no benefit to the property for which the assessment is being charged to improve. (2005 WL 2985561 (S.C.A.G.)).

P. 21 SECTION 4-9-30(6): SPECIFIC POWERS GRANTED

ATTORNEY GENERAL'S OPINIONS

Section 4-9-30 provides the powers afforded to county governments. Under a council-administrator form of county government, council must go through the county administrator regarding county personnel including internal auditors. (2008 WL 1960280 (S.C.A.G.)).

County council does not possess the authority to assign the duties of the delinquent tax collector to the county treasurer. The office of county treasurer is created by general law and thus only the General Assembly may alter the duties of that office. (2005 WL 1024611 (S.C.A.G.)).

P. 21 SECTION 4-9-30(7): SPECIFIC POWERS GRANTED

CASE NOTES

The clerk of court retired and the county passed its annual budget reducing the salary for the clerk of court. An interim clerk of court was appointed to serve the remainder of the retired clerk's term. Section 4-9-30(7) prohibits the reduction of a salary during the term for which the official is elected and the county did not have the authority to reduce the interim clerk of court's salary. *Greenwood County Council v. Brooks*, 362 S.C. 500, 608 S.E.2d 872 (2005).

ATTORNEY GENERAL'S OPINIONS

Since the appointing authority for county election commissioners is an authority outside county government, pursuant to §4-9-30(7), the General Assembly has mandated that county council possesses no authority to appoint election commission clerks. (2007 WL 3317619 (S.C.A.G)).

Counties are prohibited by §4-9-30(7) from terminating the employees of public officials. Where grant funds or other special revenue funds were utilized to hire additional sheriff's deputies, it is doubtful whether action could be taken by a county council to discontinue funding for those positions. Council would be required to pick up where the grant ended, even if the purpose for the hiring may no longer exist and the county did not provide the original funding for the position. (2007 WL 3317615 (S.C.A.G.)).

County governing bodies have the responsibility for employing and discharging county personnel. 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. A county government's ability to decrease appropriations to the office of an elected official is limited in that the appropriations cannot be decreased to the extent that they prevent the office from functioning properly or abolish the office. (2007 WL 419432 (S.C.A.G)).

Pursuant to §4-9-30(7), a county council would be authorized to increase the compensation to a sheriff for any increased duties brought about by his providing law enforcement services to a municipality during his term of office. (2006 WL 2593080 (S.C.A.G.)).

P. 23 SECTION 4-9-30(9): SPECIFIC POWERS GRANTED

ATTORNEY GENERAL'S OPINIONS

Pursuant to §4-9-30(9), counties have the authority to provide for land use and promulgate regulations pursuant thereto, subject to the provisions of Chapter 7 of Title 6. County ordinance that requires commercial timber operations to comply with county zoning regulations in certain

zones appears to be a proper exercise of authority by the county. While several provisions in the regulations place restrictions on the use of some classifications of property with regard to commercial timber operations, they do not make forestry operations a nuisance in violation of the South Carolina Forest Management Protection Act (§50-2-10 et. seq.). (2007 WL 1934807 (S.C.A.G.)).

P. 38 SECTION 4-9-33: COUNTY POLICE DEPARTMENT CREATION

ATTORNEY GENERAL'S OPINIONS

State law requires certain criminal records be maintained by the sheriff and separate from other county records. A sheriff's department would be authorized to maintain a fully independent information technology network, separate from that of the county, to maintain those criminal records. Such supervisory requirement by a sheriff is in keeping with other provisions that restrict public accessibility. However, county council could deny funds to the sheriff's office for consulting fees related to development of the network. (2006 WL 1207277 (S.C.A.G.)).

P. 40 SECTION 4-9-35: COUNTY PUBLIC LIBRARY SYSTEMS; BOARD OF TRUSTEES

ATTORNEY GENERAL'S OPINIONS

In regards to the employment and discharge of the Chief librarian, §4-9-35 provides that the board of trustees and not the county administrator is the authorized entity to exercise the policies, outlined in §4-9-36, of the library system, which are not inconsistent with the general policies established by the governing body of the county. (2008 WL 3198122 (S.C.A.G.)).

P. 42 SECTION 4-9-38: COUNTY PUBLIC LIBRARY SYSTEMS; BOARD OF TRUSTEES

ATTORNEY GENERAL'S OPINIONS

While all employees of a county library are subject to the provisions of §4-9-30(7), the legislature intended for §4-9-36 to provide more specific authority regarding personnel issues and the chief librarian. The hiring, termination and disciplinary procedure for the chief librarian is granted, pursuant to §4-9-36, to the library system's board of trustees rather than the county administration. Where one statute addresses an issue in general terms and another statute addresses the same issue in more specific terms, the more specific statute will be considered an exception to, or qualifier, of the general statute. (2008 WL 3198122 (S.C.A.G.)).

P. 43 SECTION 4-9-40: PROVIDING SERVICES WITHIN MUNICIPALITIES

CASE NOTES

If a municipality has imposed the maximum commutative tax permitted by the Accommodations Tax Act (§6-1-520(A) et. seq.) and the Hospitality Tax Act (§6-1-720(A) et. seq.) in an incorporated area, the Acts effectively preclude a county from imposing any other tax within that incorporated area. *City of Hardeeville v. Jasper County*, 340 S.C. 39, 530 S.E.2d 374 (2000).

ATTORNEY GENERAL'S OPINIONS

While a county and county officials are not obligated to perform services within the corporate limits of a city, the General Assembly has provided by statute for municipal residents to contract for county services. A sheriff is not obligated to provide specific services within a municipality, however, a sheriff may contract with a municipality to provide law enforcement services. (2006 WL 2593080 (S.C.A.G.)).

Pursuant to §4-9-40, a county could not enforce a county ordinance limiting protests or picketing on county property if the property is located within corporate limits of a municipality. County Council has no authority to enact ordinances which are enforceable within the confines of municipalities. However, by agreement, the county and the municipality could agree to enforce ordinances within the municipality. (1996 WL 452786 (S.C.A.G.)).

The Council has no authority to enact ordinances which are enforceable within the confines of municipalities. Thus, for any facilities of the Recreation Commission located within the municipalities of Richland County, the ordinance would be of no effect. (1987 WL 342441 (S.C.A.G.)).

P. 48 SECTION 4-9-60: ELECTION OR APPOINTMENT OF AUDITOR AND TREASURER

ATTORNEY GENERAL'S OPINIONS

As set forth by §§12-45-20 and 12-39-10, a county treasurer and county auditor holds office until his successor is appointed or elected and qualified. In the absence of a specific statutory or constitutional provision, public officers hold over de facto until their successors are appointed or elected and qualify. Vacancy nevertheless exists in the sense that successors may be appointed or elected and qualify; but meanwhile, the holdovers are entitled to retain the offices. (2005 WL 1609287 (S.C.A.G.)).

Cross Reference:

Appointment of deputy in a vacancy in the office of county auditor; §12-39-40

Appointment of deputy in a vacancy in the office of county treasurer; §12-45-35

P. 49 SECTION 4-9-70: PUBLIC SCHOOL EDUCATION AND COUNTY COUNCIL

CASE NOTES

Authority of the county board of education to review and approve school district budget and to set tax millage rates for each school district did not violate provision of State Constitution guaranteeing uniform taxation within a jurisdiction. Section 4-9-70 states that 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 this chapter becomes effective. By enacting §4-9-70, the General Assembly attempted to ensure that the taxing power for all school districts would be properly vested in some authority. *Burriss v. Anderson Cty. Bd. of Ed.*, 369 S.C. 443, 633 S.E.2d 482 (2007).

P. 56 SECTION 4-9-90: COUNTY COUNCIL ELECTIONS

CASE NOTES

In the absence of specific statutory or constitutional provision, public officers hold over de facto until their successors are appointed or elected and qualify. *Bradford v. Byrnes*, 221 S.C. 255, 70 S.E.2d 228 (1952).

ATTORNEY GENERAL'S OPINIONS

Council member who moved from the district from which he was elected has vacated his office, as he is no longer qualified to serve from that district. However, the member of county council would continue to serve in a de facto capacity until his successor could be selected. (2006 WL 981694 (S.C.A.G.)).

P. 64 SECTION 4-9-120: PROCEDURES FOR ADOPTION OF ORDINANCES

CASE NOTES

The county adopted rules of procedure which provided that an ordinance may be given first reading at any meeting of the council by title only. Minutes of the first meeting revealed that county council discussed the proposed ordinance at length. 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 Cty. Council*, 371 S.C. 586, 641 S.E.2d 431 (2007).

ATTORNEY GENERAL'S OPINIONS

A zoning ordinance provision stating that all future amendments or modifications in the flood insurance maps are incorporated by reference would constitute an unlawful delegation of

legislative power. While a legislative body may incorporate other legislation or rules, regulations, policies or maps as these may presently exist, any incorporation of future changes to such enactment or documents unlawfully delegates to another body, person or entity, the power to alter the ordinance. (2005 WL 1024603 (S.C.A.G.)).

P. 68 SECTION 4-9-140: BUDGETS, APPROPRIATIONS AND TAXES

ATTORNEY GENERAL'S OPINIONS

With reference to budgetary matters, while its true that the council exercises totally the budgetary authority of a county and can decrease, increase, or otherwise alter appropriations for county offices, nevertheless, it cannot so decrease the appropriations of an elected official's office so as to prevent the proper functioning thereof. Council would be required to pick up where a grant or other special revenue funds ended, even if the purpose for the hiring may no longer exist and the county did not provide the original funding for the position. (2007 WL 3317615 (S.C.A.G.)).

County council possesses the discretion to control and direct spending in their respective county, including maintenance of a reserve account. However, the county council would not be precluded from ending such a practice. One of the most basic rules is that one legislature may not bind its successors by its legislative acts. Similarly, one council cannot bind another council in discretionary spending. Therefore, a future council would be authorized to make spending decisions which would eliminate any surplus. (2004 WL 2745662 (S.C.A.G.)).

It would be inappropriate to go outside the normal appropriations process in order to spend public monies for an item for which there was no appropriation. All appropriations by a county must be reflected in its budget adopted pursuant to §4-9-140. (2005 WL 774140 (S.C.A.G.)).

Funds may be transferred in mid budget year from the register of deeds office to another department. However, county council must approve the transfer and do so by an ordinance. Accordingly, the county administrator acting alone may not effect such a transfer without the satisfaction of this requirement. (2006 WL 1376908 (S.C.A.G.)).

P. 71 SECTION 4-9-150: AUDITS OF COUNTY RECORDS

Editor's Note: Act No. 164 of 2005 amends §4-9-150 so as to permit counties to designate an accountant for three years without a competitive bid instead of one year.

§ 4-9-150. Audits of county records; designation of auditors; public inspection 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 §14-3712; 1975 (59) 692; 1977 Act No. 96; 1988 Act No. 365, Part II, §3; 2002 Act No. 356; 2005 Act No. 164.

Cross references—

Solicitor report of expenditures; §1-7-408, repealed.

Legacy Trust Fund audit; §51-22-40, repealed.

Annual Financial Report submission; §6-1-50.

CASE NOTES

The clerk of court sought to prevent a special audit of the clerk of court's office authorized by county council. The clerk argued that the special audit ordered by the county council was invalid because the county council did not articulate specific reasons why such an audit was necessary. Special audits may be provided for any agency receiving county funds as the county governing body considers necessary. The grounds laid out in the county council's resolution authorizing the special audit of the clerk of court's office constitute the functional equivalent of articulating necessity. *Brown v. County of Berkeley*, 366 S.C. 354, 622 S.E. 2d 533 (2006).

ATTORNEY GENERAL'S OPINION

Counties are required to submit an annual audit report to the Comptroller General no later than January first each year following the close of the books of the previous 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. Based on a plain reading of §4-9-150, the Legislature did not authorize the Comptroller General to halt distribution of funds paid to counties by other agencies, including the Department of Revenue. No other provision in the Code authorizes the Department of Revenue to halt such distributions due to a county's failure to file an annual report. (2007 WL 1934798 (S.C.A.G.)).

PART II

PROVISIONS THAT APPLY TO INDIVIDUAL FORMS OF GOVERNMENT

ARTICLE 7: COUNCIL-ADMINISTRATOR FORM OF GOVERNMENT

P. 85 SECTION 4-9-610: COUNTY COUNCIL ORGANIZATIONAL REQUIREMENTS

CASE NOTES

In a council-administrator form of government the Council is elected by the County's citizens and the Council employs an administrator who serves as the administrative head of county government and is responsible for the administration of all departments over which the council has control. County administrator's duty to deliver county's financial documents to a county council member was quasi-judicial duty which required exercise of discretion in determining how the act of delivering such documents should be done. Mandamus relief was not available to compel the administrator to deliver documents to a council member in a particular manner or within a particular time frame. *Wilson v. Preston*, 378 S.C. 348, 662 S.E.2d 580 (2008).

P. 86 SECTION 4-9-620: EMPLOYMENT AND REMOVAL OF ADMINISTRATORS

ATTORNEY GENERAL'S OPINIONS

Under the provisions of §4-9-620, county administrators shall be the administrative head of the county government and shall be responsible for the administration of all departments of the county government which the council has the authority to control. Under a council-administrator form of government, council must go through the county administrator with regard to matters of county personnel, including internal auditors. (2008 WL 1960280 (S.C.A.G)).

The administrator in a council-administrator form of government is responsible only for the administration of those departments which the council has the authority to control. The appointment authority for the County Board of Elections and Registration and the County Veterans Affairs director is the legislative delegation and not the county council. The county administrator would have no authority over these departments or offices. (2005 WL 2250221 (S.C.A.G)).

P. 86 SECTION 4-9-630: POWERS AND DUTIES OF ADMINISTRATORS

CASE NOTES

The powers and duties of the administrator include: executing the policies, directives, and legislative actions of the council; preparing budgets for submission to the council and, in the exercise of that responsibility, having the authority to require such reports, estimates, and statistics on an annual or periodic basis as the administrator deems necessary; preparing annual, monthly, and other reports for council on finances and administrative activities of the county; and performing such other duties as may be required by the council. *Wilson v. Preston*, 378 S.C. 348, 662 S.E.2d 580 (2008).

ATTORNEY GENERAL'S OPINIONS

According to the provisions of §4-9-630, county administrators are charged with the responsibility of hiring county employees. Under a council-administrator form of government, council must go through the county administrator with regard to hiring of an internal auditor (2008 WL 1960280 (S.C.A.G)).