



SOUTH CAROLINA
ASSOCIATION OF COUNTIES



Legal Issues For Officials & Staff in South Carolina Counties

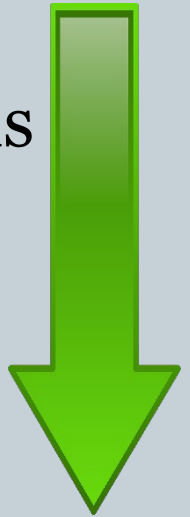
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Sources of Government Authority



1. US Constitution
2. US Code of Laws & Code of Federal Regulations
3. SC Constitution
4. SC Code of Laws
5. SC Code of Regulations
6. County Code of Ordinances



The US Constitution



- Basis for all governmental authority
- Supremacy Clause: Art. VI - “This Constitution, and the Laws of the United States...shall be the supreme law of the land... anything in the constitution or laws of any state to the contrary notwithstanding.”
- Powers not granted to the federal government are reserved to the States (10th Amendment)

US Constitution – Application to the States



- **14th Amendment: (1868)**
 - Privileges and Immunities - “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.”
 - Due Process – “nor shall any State deprive any person of life, liberty, or property, without due process of law”
 - Equal Protection – “nor deny to any person within its jurisdiction the equal protection of the laws.”

The SC Constitution (1895)



- Authorizes 3 branches of government: Executive, Legislative, and Judicial
 - Centralized most power in legislative branch - Counties were looked at as service arms of the State.
 - ✦ Supply Bills
 - ✦ Senator appointed a County Supervisor
- Heavily amended in the 1960's
 - *Post war growth - initiated county council trend*
 - *Reynolds v. Sims* “One Man One Vote” rule
- 1973 - Article VIII and 1975 - “Home Rule Act”
 - Granted counties local control & limited the General Assembly’s authority to enact local legislation

SC Code of Laws



- General Assembly provides for general laws governing all SC citizens
 - Limits “special legislation” applicable to one county – often ignored
- Limited by US and SC Constitutions
- Titles 4, 5 and 6 provide for aspects of home rule for counties, municipalities, SPD’s
 - Modern movement to encourage or mandate regional cooperation
 - ✦ Joint governance & mutual aid; land use planning; school consolidation

Powers of County Governments



- Powers of county government are provided in the Home Rule Act (4-9-10 et. seq.)
- The Act originally provided only for specific powers to counties
 - SC Code Section 4-9-30(1) – (17)
 - Counties possessed fewer powers than cities
 - Over time these powers have often been limited by the General Assembly or the Courts
- SC Code Section 4-9-25 added in 1989 granting counties general police powers

Forms of County Government



- Originally the Act created 5 forms of Government* - Currently four forms of county government are recognized
 - Council – (5)
 - Council-Supervisor (3)
 - Council-Manager (2)
 - Council-Administrator (36)
- Can be changed by referendum
 - Waiting period of four (4) years after any referendum

*Board of Commissioners – declared unconstitutional shortly after passage of the Home Rule Act (*Duncan v. York County*, 267 S.C. 327 (1976))



County Legislative Acts Enacting Ordinances & Resolutions

County Ordinances



- The Home Rule Act (4-9-120) requires local legislative action by Council by ordinance
 - Can be introduced by any member
 - Must be read **3** times* on three separate days
 - ✦ **minimum of 7 days between 2nd and 3rd reading**
 - Introduction/first reading can be by title only if county rules allow
- Emergency ordinances (SC Code 4-9-130)
 - Public emergencies – affect life, safety or property
 - 60-day limit
 - Does not require 3 readings
 - No appropriation of money/tax

*2 readings for municipalities

Limitations



- Ordinances must be consistent with the SC Constitution and Code of Laws
 - *Sandlands v. Horry County; Foothills v. City of Greenville and Beachfront v. Town of Sullivan’s Island*
- The General Assembly has enacted numerous limits on local laws
 - Preemption
 - Unfunded mandates
 - Separately elected/appointed officials
 - Taxing limitations
 - Budget provisos – “temporary” limits on specific acts

Resolutions



- Resolutions are not enactment of permanent laws
 - An expression of the opinion of council
 - ✦ To oppose the US Environmental Protection Agency's amended *Waters of the US* Regulations.
 - Memorial record of significant event or individual
 - ✦ Recognize Week of May 7-13, 2023 as Correctional Officer Appreciation Week
 - ✦ Recognize and Honor Mrs. Jane Doe for her contributions to the County.
 - To direct county action on one-time/limited event
 - ✦ To direct the County CAO to request supplemental legal assistance and amicus brief from SCAC



Legal Authority of County Officials

Council – Legislative Body



- **Forms the basis of county government**
 - Council by majority acts as a single legislative body
 - Enactment of county policies
 - ✦ Administered by County CAO
 - Creation of county departments, agencies
 - ✦ Supervision by County CAO
- **Creation of Boards and Commissions**
 - Appoint members
 - Establish terms and qualifications

Council Authority



- Section 4-9-110: “Council shall determine its own rules and order of business”
- Council has direct statutory authority over two employees
 - CAO and Clerk to Council
- Members cannot direct/order county employees – contacts must be through the CAO
 - Undue influence & harassment
- Council has authority to hire professionals to audit & investigate (*Bradshaw v. Anderson*)
 - Temporary basis to address specific issue
 - Audit of agencies receiving county general funds

Public Hearings



- SC Code section 4-9-130 mandates that certain ordinances must have public hearing before final action
 - Adopt annual budgets (operational and capital) or appropriations – **must follow requirements in SC Code 6-1-80**
 - Levy taxes
 - Adopt building/regulatory codes; land use plans; zoning ordinances; and subdivision regulations
 - Sell or lease county real property

Council Member Salary & Expenses



SECTION 4-9-100

- No member of council shall hold any other office of honor or profit in government
 - Exception for military commissions and notaries public
- Council shall by ordinance prescribe the salary and compensation for its members.
- Council may by ordinance adjust the salary - but the change is not effective until the commencement of the terms of at least two members elected at the next general election.
- Members may also be reimbursed for **actual expenses incurred** in the conduct of their official duties.

Council Members as Individuals



- Members as individuals only have the rights granted all county citizens. (*Wilson v Preston*)
- Prohibited use of employees for personal gain
 - ✦ Potential for jail time!
- Ethics & Conflicts of Interest
 - Notice to chair of any conflicts
 - Statement of economic interest
 - Social & business settings – “meeting”

The County CAO



- SC Code provides for the specific powers of County CAO
 - Supervisor: 4-9-420
 - Administrator: 4-9-630
 - Manager: 4-9-830
- Serves as the administrative arm of the county
 - Hires, directs and disciplines county employees – other than those working for an elected/appointed official
- Ethics:
 - statement of economic interest filed in the same manner as council members

Other Elected County Officials



- **Employees of Elected Officials**
 - Official is responsible for hiring, discipline & termination
 - Employees bound by other general personnel policies
- **Application of county ordinances**
 - Generally elected officials must follow county ordinances unless a state law exempts them (procurement, general hiring policies)
- **Budgets**
 - Council has ultimate budget authority, including departments of elected officials
 - ✦ Can't reduce budget beyond certain levels
 - ✦ Can't reduce salary during the official's term



Tort Liability Issues for County Government

Legal Liability for Torts



- **SC Tort Claims Act – SC Code 15-78-10 et seq.**
 - Provides the exclusive remedy for state law torts committed by County officials/employees
 - Limits on liability of 300/600k – no punitive damages
 - No personal liability – entity only
 - ✦ Employee must be acting in the course & scope of employment
- **Is “the County” the proper party**
 - Elected Officials/Departments should be named separately and answered by the official only (*Edwards v Lex. Cnty. Sheriff*, 2010)
 - Governments are only responsible for their own torts

Tort Claims Act Exceptions



- SC Code Section 15-78-60 provides numerous exceptions to liability for county officials/employees
 - Legislative immunity (if acting within your statutory authority)
 - ✦ Immunity extends to legislative staff*
 - Administrative action/inaction
 - Adoption/enforcement of laws, regulations, etc.
 - Exercise of discretion or judgement

Lockaby v. City of Simpsonville, et. al., Appellate Case No. 2019-001449 (Ct. Appeals)
(June 21, 2023)

Federal Tort Liability



- Federal civil rights laws – 42 USC 1983
 - denial of an individual's civil rights by an individual acting *under color of law*
 - unlimited damages – economic and putative
 - personal liability
 - no entity liability, with exceptions (*Monell v. New York*)
- Most often arises in the law enforcement arena
 - Excessive use of force
- Most self-insurance or private policies will exclude coverage for intentional and criminal acts

?? QUESTIONS ??



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