

What authority does a county have to control access or close public buildings in the county?

SCAC legal staff is of the opinion that county council has broad authority to control either public access to or the closure of public buildings or property owned by the county, other than the offices or property of directly elected officials such as the courthouse and Sheriff's operations.

Various provisions within Title 4 (Counties) of the S.C. Code of Laws grants counties authority over their own property. First § 4-1-10(4) grants the county the authority [t]o do all acts in relation to the property and concerns of the county necessary thereto. Next, counties have been granted broad police powers related to the health, safety, of county citizens pursuant to §4-9-25, which reads in part

“All counties of the State, in addition to the powers conferred to their specific form of government, have authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of these powers in relation to health and order in counties or respecting any subject as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order, and good government in them.”

These two sections together strongly suggest that counties have the authority to undertake actions necessary to control their property in order to maintain the health, general welfare and order of the county's citizens. The last paragraph of § 4-9-25 directs that the powers granted to counties in that section are to be liberally construed in favor of the county.

It should be noted that while the SC Code of Laws grants control of the county courthouse to the Clerk of Court, a memorandum by the Chief Justice of the SC Supreme Court has directed county and municipal employees working within the unified court system should follow the directives of their specific counties.

<https://www.sccourts.org/whatsnew/displayWhatsNew.cfm?indexId=2450>

Should a county be forced to close offices/public buildings and release employees to alternate work sites, the US Department of Labor has provided a website to provide information on legal issues involving the Fair Labor Standards Act and other federal labor laws. Information can be found here: <https://www.dol.gov/agencies/whd/pandemic>

What authority does county council have to cancel or postpone council meetings?

SCAC legal staff is of the opinion that absent a declaration of a state of emergency by the Governor, county councils must meet at least once in each and every calendar month. Section 4-

9-110 of the S.C. Code provides in part that county council after public notice shall meet at least once each month but may meet more frequently in accordance with a schedule prescribed by the council and made public. That section also provides that council determines its own rules and order of business.

The Attorney General has opined that § 4-9-110's provision that councils determine their own rules applies only to rules of procedure or order and does not act to circumvent conflicting state laws. In an opinion issued last year the Attorney General wrote that they believed that "a court likely would hold that S.C. Code Ann. § 4-9-110 requires county councils to hold publicly noticed meetings at least once in each and every calendar month." 2019 WL 3243868 (S.C.A.G.)

The underlying issue in that 2019 opinion did not implicate the authority of the Governor to act after the declaration of a state of emergency pursuant to Article 7, Chapter 3 of Title 1 of the S.C. Code. §§1-3-410 to 490.

Governor McMaster's Executive Order 2020-09 dated March 15, 2020 included Section 4 to recommend the cancellation, postponement or rescheduling of public gatherings of 100 persons or greater. Section 4 however, specifically excluded state or local government meetings. Therefore, SCAC legal staff's opinion is that county council must continue to meet at least once in each and every calendar month, including those months during which the state is under a declaration of a state of emergency.

<https://governor.sc.gov/sites/default/files/Documents/Executive-Orders/2020-03-15%20FILED%20Executive%20Order%20No.%202020-09%20-%20Closing%20Schools%20Cancelling%20Elections%20Other%20Provisions%20Due%20to%20COVID-19.pdf>

What authority does county council have in conducting public meetings?

If a county decides to continue conducting public meetings there are alternatives to address the health of members and the public. Section 30-4-20(d) of the Freedom of Information Act (FOIA) defines a public meeting as including both physical and electronic means. A county can choose to hold a meeting by electronic means such as telephone or video as long as the public has the means to attend. Prior Attorneys General opinions have opined that the public attendance is met if those attending by alternate means have the ability to fully hear what is being discussed and to be heard during any public comment period. All meeting held by alternative means must be conducted by the usual public meetings provisions of FOIA such as notice, agenda and minutes.

The information provided is not considered legal advice. Please consult with your county attorney for answers to specific questions within your county. For general inquires please contact SCAC legal staff at (803) 252-7255 or 1-800-922-6081.