



**SOUTH CAROLINA
ASSOCIATION OF COUNTIES**



Legal Issues For Council Members; CAO's; and Other Elected Officials in South Carolina Counties

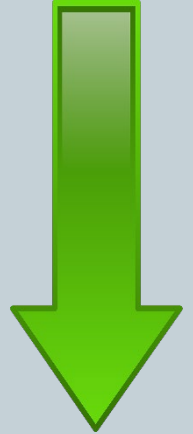
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Sources of Government Authority



1. **US Constitution**
 - Federal Statutes (US Code) & Regulation (CFR)
2. **SC Constitution**
3. **SC Code of Laws & Code of Regulations**
 - Title 4 (Counties) *SC Home Rule Act – Chapter 9*
 - Title 6 (Local Gov. generally, Planning, Finance)
 - Title 12 (Taxation)
 - Titles 23 (Public Safety)



The US Constitution



- **Basis for all governmental authority**
 - “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.” (Art. VI – Supremacy Clause)
 - 14th Amendment: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.”
- **Powers not granted to the federal government are reserved to the States (10th Amendment)**

The SC Constitution of 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
 - Reynolds v. Sims “One Man One Vote” rule
 - Post war growth made central control cumbersome
- 1970's: 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
 - ✦ 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 – (2)
 - Council-Supervisor (4)*
 - Council-Manager (2)
 - Council-Administrator (38)*
 - Board of Commissioners – *unconstitutional*
- Can be changed by referendum

**Chester County voters approved a referendum to change to Administrator form from Council-Supervisor in 2020 (effective after 2022)*



Enacting Local 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

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 (*also see* 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

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
 - Tax and budget limitations

Resolutions



- **Resolutions vs. Ordinances**
 - Resolutions are not enactment of permanent laws
 - ✦ Administrative/ministerial acts of council
 - An expression of the wishes or opinion of council
 - Memorial record of significant event
 - To direct county action on one-time/limited event
 - ✦ SCAC Amicus/Supplemental legal request



Authority of County Council; CAO; other Elected County Officials

Council – Legislative Body



- Forms the basis of county government
- Appoint members of lower boards/commissions
- Section 4-9-110: “Council shall determine its own rules and order of business”
- Council must act as a single legislative body
- Council hires a CAO (other than Supervisor)
- 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

Legal Issues Specific to Council Members



- Use of county property/manpower
 - Must be used for public purposes only
 - Potential for significant fines and **jail time!**
- Council salary & expenses

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

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

Council Members as Individuals



- Individual council members only have the rights granted all county citizens.
(*Wilson v Preston*)
- Members cannot direct county employees
– contacts must be through the CAO
 - Undue influence & harassment
- 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)
 - Administrative action/inaction
 - Adoption/enforcement of laws, regulations, etc.
 - Exercise of discretion or judgement

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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