Legal Authority of County Council & CAO’s in South Carolina
Sources of Government Authority

1. US Constitution
2. SC Constitution
3. SC Code of Laws & Code of Regulations
4. SC Home Rule Act (Chapter 9 Title 4 SC Code)
   1. General Police Powers (4-9-25)
   2. Specific Powers (4-9-30)
The US Constitution

- **Basis for all governmental authority**
  - “This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, 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
  - Limited local control – Counties were looked at as service arms of the State.
- Heavily amended in the 1960’s
- 1970’s: Article VIII ushered in “Home Rule” - limited General Assembly’s authority to enact local legislation
SC Code of Laws

- General Assembly provides for general laws governing all SC citizens
- Limited by US and SC Constitutions
- Supposed to be limited to laws of a general nature
  - not always adhered to
- Titles 4, 5 and 6 provide for aspects of home rule for counties, municipalities, SPD’s
Forms and Powers of County Governments

- Currently four forms of county government
  - Council; Council-Supervisor; Council-Manager; Council-Administrator and
  - Board of Commissioners - *unconstitutional*

- Originally provided only specific powers to counties
  - SC Code Section 4-9-30(1) – (17)
  - Counties possessed fewer powers than cities

- SC Code Section 4-9-25 added in 1989 granting counties general police powers
How Local Laws Are Enacted
The Enactment of Local Laws

- The Home Rule Act (4-9-120) requires local legislative action by ordinance
  - Can be introduced by any member
  - Must be read three times on three separate days – with at least 7 days between 2nd and 3rd readings (doesn’t apply to emergency ordinances)
  - Introduction/first reading can be by title only
- Emergency ordinances (SC Code 4-9-130)
  - Public emergencies – affect life, safety or property
  - 90 day limit
  - No tax levy/service fee
SC Code section 4-9-130 mandates that certain ordinances must have public hearing before final action

- Adopt annual budget (operational and capital) or appropriations (also see SC Code 6-1-80)
- Levy taxes
- Adopt building/regulatory codes and zoning/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
Powers of County Council vs. County CAO
Council as a Legislative Body

- Forms the basis of county government
- 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)
  - Oversight of all county employees other than clerk to council
- Council has authority to hire professionals to audit & investigate (*Bradshaw v. Anderson*)
  - Audit of agencies receiving county general funds
- Council relationship to other elected officials
  - Budgets
  - County property
Legal Issues Specific to Council Members

- **Use of county property/manpower**
  - Must be used for public purposes only
  - Potential court sanctions and jail time!

- **Council salary & expenses**
  - 4-9-100: members salary/compensation set by ordinance
  - May be adjusted – not effective until commencement of terms of at least 2 members after a general election
  - Members can only be reimbursed based on actual expense, not a per diem
  - Travel expenses should be included in the budget – or supplemental appropriation may be necessary
Individual Council Members

- Individually council members only have the rights granted other 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 (4)
  - Administrator: 4-9-630 (38)
  - Manager: 4-9-830 (2)
  - Director (2)

• Serves as the administrative arm of the county
  - Hires, directs and disciplines county employees – other than those working for an elected/appointed official
    - County attorney

• Ethics:
  - statement of economic interest
Tort Liability
Issues for
County Government
Legal Liability for Torts

- Is “the County” the proper party
- Federal civil rights laws – 42 USC 1983
  - denial of an individual’s civil rights
  - unlimited damages
  - **personal liability** – no entity liability
- 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
    - *Cricket Cove*
SC Code Section 15-78-60 provides numerous exceptions to liability for county officials/employees:
- Legislative immunity
- Administrative action/inaction
- Adoption/enforcement of laws, regulations, etc.
- Exercise of discretion or judgement
- Must be in the course and scope of employment
  - No liability for intentional/criminal acts