



Legal Authority of County Council & CAO's in South Carolina

Sources of Government Authority



1. US Constitution
 1. Federal Statutes (US Code) & Regulation (CFR)
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

Public Hearings



- 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*

Tort Claims Act Exceptions



- 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