Home Rule Handbook

For

County Government

2013 Edition

Published by
South Carolina Association of Counties

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What is the Association of Counties?

The South Carolina Association of Counties (SCAC), chartered in 1967, is the only organization dedicated to statewide representation of county government in South Carolina.

SCAC's membership includes elected and appointed county officials from all 46 counties in the state. These officials, dedicated to the improvement of county government, work through the Association to protect and expand the authority granted to county government in the 1975 Home Rule Act.

SCAC is a nonpartisan, nonprofit organization and maintains a full-time staff in Columbia. The Association represents county governments, not county employees. It is governed by a 29-member Board of Directors, which is selected at the Association's Annual Conference.

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... Building Stronger Counties for Tomorrow

CONFERENCES

SCAC provides many opportunities for county officials to meet and learn, among them:

Mid-Year Conference – Held in late winter in Columbia, this conference enables all county officials to become better informed about the Association's legislative program. The Association also hosts a reception for all members of the Legislature during this conference.

Annual Conference – Held in August, this conference is open to all elected and appointed officials. The conference includes a business session, general session, workshops, group meetings and exhibits of county products and services.

Legislative Conference – Held in December, this conference allows members of the Legislative Committee to discuss and adopt a legislative program for the upcoming year. The committee is composed of each Council Chairman along with the Association's Board of Directors.

EDUCATION

The Association, in cooperation with the Institute for Public Service and Policy Research at the University of South Carolina and The Strom Thurmond Institute at Clemson University, conducts an ***Institute of Government*** (Level I, Level II, and Advanced Level) ***for County Officials***. This certificate program helps county officials enhance their skills and abilities. Courses are offered at the Annual and Mid-Year Conferences and at the County Council Coalition Meeting in the fall.

SCAC also sponsors a number of continuing education webcasts for county officials and employees throughout the year at no charge to counties. Within a few weeks after the web-based training is broadcast live, county officials and employees are able to access the session as a video on demand from the webcast library on the SCAC website at **http://www.counties.org**

FINANCIAL SERVICES

SCAC offers a number of financial services to its member counties. SCAC sponsors three self-funded insurance Trusts designed specifically to meet the needs and requirements of local government agencies, including the Workers' Compensation Trust, Property and Liability Trust and OPEB Trust. In cooperation with the National Association of Counties Financial Services Center, SCAC now offers purchasing cooperative agreements with Independent Stationers, GovDeals and tax audit services with Tax Management Associates, Inc.

LEGAL ASSISTANCE

SCAC provides legal assistance to county governments by rendering legal opinions, preparing *Amicus* briefs, drafting ordinances, and consulting with other county officials. The Association provides support to counties involved in litigation, which might affect other counties. It also sponsors the Local Government Attorneys' Institute, which provides six hours of continuing legal education for local government attorneys.

LEGISLATIVE INFORMATION

The S. C. General Assembly convenes each January in Columbia and adjourns *sine die* in June. One in every four bills introduced affects county governments. SCAC monitors each bill as it is introduced and keeps its members up-to-date on all legislative activity with a weekly ***Friday Report***. The Association also dispatches ***Legislative Action Alerts*** and publishes ***Acts that Affect Counties***.

PUBLIC INFORMATION

SCAC publishes an annual ***Directory of County Officials*** listing addresses and telephone numbers of county offices and their elected and appointed officials. The Association also publishes ***Carolina Counties Newsletter*** five times a year to keep the Association's membership informed about legislation and various county news. ***County Focus Magazine*** is published four times a year and features articles on county trends, innovations and other subjects of interest to county officials and includes a section called "County Update."

RESEARCH AND TECHNICAL ASSISTANCE

SCAC provides research and technical assistance in many areas to those counties which request it. The Association staff annually responds to hundreds of inquiries from county officials ranging from simple requests for a sample ordinance to more complex questions requiring considerable research. The Association also develops technical research bulletins and conducts surveys on a variety of subjects. Regular publications such as the ***Annual Wage and Salary Report***, ***Acts That Affect Counties***, ***Home Rule Handbook***, ***Handbook for South Carolina County Officials***, and ***Case Law Affecting Local Government*** are made available to county officials. SCAC's website address is:

http://www.sccounties.org

The site provides county officials with the latest information on SCAC programs, services, and meetings as well as legislative information, research and survey results and links to other local government resources.

SETOFF DEBT PROGRAM

Counties are able to collect delinquent emergency medical services debts, magistrate and family court fines, hospital debts, as well as other fees owed to the counties through SCAC's Setoff Debt Collection Program. Debts are submitted through the Association to the S. C. Department of Revenue to be matched with income tax refunds. The debt is deducted from a refund and returned through SCAC to the claimant.

Preface

The cornerstone of self-government at the local level is the 1975 Home Rule Act. That act and subsequent amendments define the basic structure of county government, its authority to act, and its obligations to the citizens. Many other laws, both state and federal, affect the daily operations of county government, but an understanding of the Home Rule Act is essential if other laws are to be read in context.

The Home Rule Act, as it applies to county government, is found in Chapter 9 of Title 4 of the South Carolina Code of Laws. This publication will reproduce the Home Rule Act in much the same fashion as it appears in the Code of Laws. However, the arrangement of the statutes and the format have been changed to make this publication easier to use than the Code of Laws.

First, Chapter 9 of Title 4 is divided into two parts. Part I contains the code sections which apply to all forms of county government. Part II contains those code sections which address one specific form of government.

Second, Editor's Notes have been added to summarize a code section, provide background information, or provide an interpretation of a complex section. The Editor's Notes do not appear in the Code of Laws.

Third, below many of the code sections are Case Notes and Attorney General's Opinions which interpret that code section or supply a piece of information which may help the reader interpret it. Most of the case and attorney general opinion summaries which appear in the Code of Laws are reproduced here. Some of the items which are of historical significance only have been omitted and other cases and opinions have been added. Some of the case notes and attorney general's opinions have editorial material in parentheses which point out information which might affect the result of the case or opinion cited. Other case notes and attorney general's opinions appear here, but not in the Code of Laws.

Finally, a short subject heading has been given to each code section for use in this publication. This is in addition to the title, or "catch line," which appears in the Code of Laws. The catch lines used in the Code are supplied by the publisher of the Code and do not carry the force of law. The catch lines, while often wordy, are reprinted here because they serve as a table of contents for longer, more complex code sections.

This publication is intended to give you a readily available reference to begin your search for information. and is not designed to be the final word on the law affecting county government structure and operations. The statutes, case notes, and summaries of Attorney General's opinions are not a complete source of the law which may affect the answer to a question you may have. It is important to consult your county attorney when you have a question regarding the law.

Should you need assistance, the South Carolina Association of Counties staff is available to help all county officials and employees with any questions which might arise regarding the Home Rule Act or any other matter which affects county government. Whether the question involves a legal interpretation, data from other counties, or proposed legislation, the staff is here to serve the counties of our state. You may call the Association of Counties office at 1-800-922-6081, or e-mail us at scac@scac.state.sc.us.

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PART I

PROVISIONS THAT APPLY TO ALL FORMS OF GOVERNMENT

ARTICLE 1: GENERAL PROVISIONS

SECTION 4-9-10: Choosing the Form of Government

EDITOR'S NOTE: This section provided the process for implementing the Home Rule Act. With the exception of subsection (c), this section is of historical interest only. Subsection (c) is the procedure for changing the form of government, number of council members, or method of election after the initial selection.

§ 4-9-10. Referendum to determine form of county government; adoption of form of government selected; form of government when not otherwise determined by referendum; change in initial form; continuation of officials in office.

(a) Each county, after at least two public hearings which shall have been advertised in a newspaper of general circulation in the county and wherein the alternate forms of government provided for in this chapter are explained by the legislative delegation of the county, may prior to July 1, 1976, conduct a referendum to determine the wishes of the qualified electors as to the form of government to be selected or become subject to the provisions of subsection (b) of this section. The referendum may be called by an act of the General Assembly, resolution of the governing body, or upon petition of not less than ten percent of the registered electors of the county. The referendum shall be conducted by the county election commission. The question submitted shall be framed by the authority calling for the referendum and when called by petition such petition shall state the question to be proposed. All alternate forms of government provided for in this Chapter shall appear on the ballot and unless one form receives a majority favorable vote in the initial referendum, a second or run-off referendum shall be held two weeks after the first referendum at which time the two forms which received the highest number of votes shall again be submitted to the qualified electors for final selection of the forms to be adopted. A referendum may also be called to determine the wishes of the registered electors as to the question of whether the members of the governing body of the county shall be elected from defined single member election districts or at large from the county. Such referendum may be called by an act of the General Assembly, resolution of the governing body of the county or by petition of not less than ten percent of the registered electors. The governing body shall by resolution provide for adoption of the form of government selected in the

referendum, which shall be filed in the office of the Secretary of State and be effective immediately upon such filing. All resolutions which adopt a form of county government shall be printed in the Code of Laws of South Carolina and remain a part thereof until amended or repealed. The General Assembly shall provide for the number of councilmen or commissioners. In the event that the members of the governing body are required to be elected from defined single member election districts, the General Assembly shall provide for the composition of such districts.

(b) Notwithstanding any other provisions of this chapter, unless otherwise determined by referendum prior to July 1, 1976, the county concerned shall, beginning on that date, have the form of government including the method of election, number, composition and terms of the governing body most nearly corresponding to the form in effect in the county immediately prior to that date, which the General Assembly hereby determines to be as follows:

For the counties of Abbeville, Allendale, Barnwell, Calhoun, Dillon, Georgetown, Greenwood, Horry, Laurens, Oconee and Saluda, the council form of government as prescribed in Article 3 of this chapter.
For the counties of Anderson, Bamberg, McCormick, Union and York, the council-supervisor form of government as prescribed in Article 5 of this chapter.

For the counties of Aiken, Beaufort, Charleston, Cherokee, Chester, Chesterfield, Clarendon, Darlington, Dorchester, Edgefield, Fairfield, Florence, Greenville, Hampton, Jasper, Kershaw, Lee, Lancaster, Lexington, Newberry, Pickens, Richland, Spartanburg and Sumter the council-administrator form of government as prescribed in Article 7 of this chapter.

For the counties of Berkeley, Colleton, Marion, Orangeburg, Marlboro and Williamsburg, the county board of commissioners form of government as prescribed in Article 11 of this chapter.

For those counties in which the county governing body, immediately prior to June 25, 1975, was appointed rather than elected, the members of the governing body shall be required to be elected from defined single member election districts, unless otherwise determined by a valid referendum prior to July 1, 1976. For the purpose of this section, such referendum shall be deemed valid unless declared to be in violation of state or federal law by a court of competent jurisdiction.

(c) After the initial form of government and the number and method of election of county council including the chairman has been adopted and selected, the adopted form, number, and method of election shall not be changed for a period of two years from the day such form becomes effective and then only as a result

of a referendum as hereinafter provided for. Referendums may be called by the governing body or upon petition of not less than ten percent of the registered electors of the county. Petitions shall be certified as valid or rejected by the county board of registration within 60 days after they have been delivered to the board and, if certified, shall be filed with the governing body which shall provide for a referendum not more than ninety days thereafter. If more than one petition is filed within the time allowed for such filing, the petition bearing the largest number of signatures of registered electors shall be the proposal presented, in the manner set forth hereinafter. Referendums shall be conducted by the county election commissioner and may be held in a general election or in a special election as determined by the governing body. No change to an alternate form of government, different number of council members, or method of elections of council including the chairman as a result of a referendum shall become effective unless such proposed form receives a favorable vote of a majority of those persons voting in a referendum. In any referendum, the question voted upon, whether it be to change the form of government, number of council members, or methods of election, shall give the qualified electors an alternative to retain the existing form of government, number of council members, or method of election or change to one other designated form, number, or method of election. After a referendum has been held and whether or not a change in the form results therefrom, no additional referendums shall be held for a period of four years.

If the governing body of the county as initially or subsequently established pursuant to a referendum or otherwise shall be declared to be illegal and not in compliance with state and federal law by a court of competent jurisdiction, the General Assembly shall have the right to prescribe the form of government, the method of election, and the number and terms of council members but may submit to the qualified electors by referendum a question as to their wishes with respect to any element thereof which questions shall include as an option the method of election in effect at the time of referendum.

(d) Notwithstanding any other provision of this section, the council-manager form of government as provided for in Article 9 of this chapter shall be adopted only after receiving a favorable referendum vote.

(e) All members of the governing bodies of the respective counties serving terms of office on the date which a particular form of county government becomes effective shall continue to serve the terms for which they were elected or appointed and until their successors are elected or appointed and have qualified.

HISTORY: 1962 Code § 14-3701; 1975 (59) 692; 1980 Act No. 300, §§ 1, 1A, 2; 1982 Act No. 313, § 3.

Cross References --

Right of the people to modify their form of government, see S.C. Const., art. 1, § 1. Constitutional provisions regarding counties and county government, see S.C. Const., art. 7, § 11; art. 8, §§ 1, 7.

Charges for legal advertisements in newspapers, see §§ 15-29-80 to 15-29-100.

Research and Practice References --

Annual Survey of South Carolina Law: State and Local Government: Home Rule and the "One-Shot" Doctrine. 33 S.C. L. Rev. 148 (1981).

CASE NOTES

Act 499 is not unconstitutional on grounds that it allows residents of one county to be treated differently than residents of other counties, despite the argument that the Home Rule Act was intended to make county government uniform throughout the state. Robinson v. Richland County Council, 293 S.C. 27, 358 S.E.2d 392 (1987).

Article 8, § 14 precludes the legislature from delegating to counties the responsibility for enacting legislation relating to subjects encompassed by that section, and from creating exceptions to general constitutional and statutory requirements for individual counties, but does not limit the power of the legislature to create alternate means for counties to exercise constitutional powers by general law. The argument of the taxpayer that the legislature had only one chance to enact legislation pursuant to Article 8, § 7 of the constitution, and that once the Home Rule Act was enacted, the legislature lost the authority to enact any further legislation dealing with bonded indebtedness of counties or structure in administration of any governmental services was rejected. Robinson v. Richland County Council, 293 S.C. 27, 358 S.E.2d 392 (1987).

The Home Rule Act, while preventing the General Assembly from enacting special legislation and voiding any special legislation that contradicts the general law, does not operate retroactively to abolish all special legislation that was in effect in South Carolina prior to the enactment of the Home Rule Act. Graham v. Creel, 289 S.C. 165, 345 S.E.2d 717 (1986).

The Court recognizes an exception to outright prohibition against laws for a specific county as stated in Article 8, § 7 by reading §§ 1, 7, and 17 of Article 8 together and reasoning that specific legislation necessary to bring about orderly transition to home rule is constitutionally permissible because the legislation's authority is temporary in nature and extends only to the point necessary to place Article 8 fully into operation. Section 4-9-10 and the language "or subsequently" merely recognizes the possibility, as typified in Horry County's experience, that more than one attempt might be necessary to complete the transition to home rule and refers not to county governments established subsequent to the initial one but rather to attempts to set up the initial government and the statute is, therefore, constitutional. Horry County v. Cooke, 275 S.C. 19, 267 S.E.2d 82 (1980).

General law permits the General Assembly to act to a very limited extent by special law in establishment of each initial county government, but it does not allow the General Assembly to repeatedly inject its will into the operation of county government, and the constitutional prohibition against special legislation prohibits the General Assembly from enacting successive special legislation in an attempt to secure the sanction of the United States Department of Justice for the form of county government. Van Fore v. Cooke, 273 S.C. 136, 255 S.E.2d 339 (1979).

The right to select a form of local government is purely statutory, and courts may not interfere with the clear mandate of the Home Rule Act. Infinger v. Edwards, 268 S.C. 375, 234 S.E.2d 214 (1977).

Former district residency requirements for candidates for the county council remained in effect, despite challenge that they were contrary to the provisions of the Home Rule Act, due to the county's failure to hold a timely referendum. Infinger v. Edwards, 268 S.C. 375, 234 S.E.2d 214 (1977).

A county council was not required to call and hold an election to determine the form of local government to be used in the county where the petitions calling for a popular election were not filed in sufficient time to provide reasonable notice to the electorate and to hold public hearings, as contemplated by the statute. McCain v. Edwards, 272 S.C. 539, 252 S.E.2d 924 (1977).

Consistent with South Carolina Constitution Article 8, § 7 and pursuant to [§ 4-9-30, 1976 Code] each county under forms one through four of county government [§ 4-9-20, 1976 Code] may conduct its own governmental affairs without the necessity of periodic General Assembly intervention much as municipalities have heretofore operated. Duncan v. County of York, 267 S.C. 327, 228 S.E.2d 92 (1976).

ATTORNEY GENERAL'S OPINIONS

Upon approval of the change in form of government by the Justice Department, and upon the necessary action being taken by county council to effectuate the change in the form of government, the new form of government immediately goes into effect. Consistent with § 4-9-10(e) and Op. S.C. Atty. Gen., No. 88-36, council members not subject to reelection in the election in which the referendum was held would continue to serve until their respective terms expire. Council members elected in the election during which the referendum was held would serve until the expiration of their respective terms. Additional county council positions authorized by the referendum would be filled by special election. Unpublished Op. Atty. Gen., dated January 6, 2005.

If the voters of Chester County were to approve a change in the county’s form of government and, therefore, abandon the council-supervisor form, the county supervisor elected during the general election in November would serve the full term of office. Unpublished Op. Atty. Gen., dated February 20, 1998.

There is no requirement in § 4-9-10(c), unlike § 4-9-10(a), that a resolution be filed with the Secretary of State to effectuate a new form of county government. However, the county would not be prohibited from filing the implementing ordinance with the Secretary of State. 1993 Op. Atty. Gen., No. 93-64.

Upon successful passage of a referendum to change the form of county government and number of council members, the county council would adopt an ordinance to implement the changes approved by the electorate; such changes would then be submitted to the Justice Department for approval under the Voting Rights Act of 1965, prior to their becoming effective. Incumbent council members, not subject to reelection in the election during which the referendum was held, would continue to serve until their respective terms expire; council members elected in the election during which the referendum was held would serve until the expiration of their respective terms. Any positions authorized by the referendum would be filled by special election. 1988 Op. Atty. Gen., No. 88-36. *Ed. Note--On June 26, 2013, the U.S. Supreme Court, in Shelby County v. Holder, held that the formula in the Voting Rights Act that determined which states were subject to preclearance was unconstitutional. As of this publication date, counties in South Carolina are not required to obtain preclearance before implementing a change in voting procedure. In the future, Congress may choose to enact a new formula that may subject counties in South Carolina to preclearance.*

Inasmuch as the law does not expressly address the format that the questions on a referendum ballot must take, the better reasoned approach and one that will allow a more thorough expression of the voters' intent would be to propound each of the various changes in a separate question on the referendum ballot, at the same time ensuring that the alternatives mandated by § 4-9-10(c) of the code are provided. 1987 Op. Atty. Gen., No. 87-81.

The petition language requesting a reduction in council size from 11 to 7 members would require the reduction be accomplished in 1984. 1983 Op. Atty. Gen., No. 83-9.

A referendum ballot should contain only the question or questions as set out in the petition, or as called for by the council. 1983 Op. Atty. Gen., No. 83-16.

In counties having a council-administrator form of government, the county council must approve a re-organizational change before it may be implemented. 1982 Op. Atty. Gen., No. 82-57.

County governing bodies become vested with the Home Rule Act powers, either upon their adoption of one of the forms of government pursuant to [§ 4-9-10(a), 1976 Code], or on July 1, 1976, pursuant to [§ 4-9-10(b), 1976 Code]. 1974-75 Op. Atty. Gen., No. 4043.

The present county council members will continue to serve as such until the expiration of their respective terms of office, notwithstanding that county's selection of single member election district method of election for members of the governing body pursuant to [§ 4-9-10, 1976 Code], the “home rule” legislation. 1974-75 Op. Atty. Gen., No. 4147.

SECTION 4-9-20: Forms of County Government

EDITOR'S NOTE: Section 7 of Article 8 of the South Carolina Constitution allows the legislature to provide for up to five alternative forms of government for counties. This section catalogs the five forms that the legislature devised in 1975. The Board of Commissioners form perpetuated control by legislative delegation and was held unconstitutional by the state Supreme Court. The remaining four forms are discussed in detail in Part II of this handbook.

§ 4-9-20. Designation of permissible alternative forms of government.

> **The alternate forms of government which may be adopted pursuant to § 4-9-10 shall be one of the following:**
>
> **(a) Council form as set forth in Article 3;**
>
> **(b) Council-supervisor form as set forth in Article 5;**
>
> **(c) Council-administrator form as set forth in Article 7;**
>
> **(d) Council-manager form as set forth in Article 9;**
>
> **(e) Board of commissioners form as set forth in Article 11.**

HISTORY: 1962 Code § 14-3702; 1975 (59) 692.

Cross References --

> *Constitutional provision authorizing establishment of up to five alternate forms of government, see S.C. Const., art. 8, § 7.*

SECTION 4-9-25: General Police Power

EDITOR'S NOTE: This section gives county governing bodies general police power. Before the passage of this section, there was confusion as to whether or not this power had been granted in the Home Rule Act. The confusion was evident in the conflicting Attorney General's opinions that were issued on this topic prior to the adoption of this section.

Political subdivisions of the state, including counties, have no inherent power. Any powers that they are to exercise must be granted to them by the state. Without general police power, it would be necessary for the state to grant specific authorization for each area of regulation.

With the passage of this section, counties can regulate unless the state or federal government has

prohibited additional regulation in a specific area, or there is a comprehensive system in place that completely covers the area. However, county ordinances may never conflict with a state or federal statute.

Perhaps the best way to view the general police powers is as a gap filler. It fills in all the gaps where specific authorization was once needed to regulate.

The last sentence of this section requires liberal construction of this grant of general powers. This sentence statutorily reverses Dillon's Rule, a nineteenth century common law doctrine requiring narrow interpretation and strict construction of all grants of power to political subdivisions. Under Dillon's Rule, political subdivisions could only exercise "the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in, or incident to, the powers expressly granted; and third, those essential to the declared objects and purposes of the corporation-not simply convenient, but indispensable." Dillon, Municipal Corporations, 2d ed., 1873, p. 173. (Emphasis in the original.)

§ 4-9-25. Powers of Counties.

> **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. The powers of a county must be liberally construed in favor of the county and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties.**

HISTORY: 1989 Act No. 139.

Cross References –

Legislative preemption of financial and lending regulation, see § 34-1-140.

Research and Practice References --

56 Am. Jur. 2d Municipal Corporations, Counties and other Political Subdivisions §§ 193 et seq.

62 C.J.S. Municipal Corporations §§ 106 et seq.

CASE NOTES

A solid waste flow control ordinance is a valid exercise of the county's police powers and not preempted by the S.C. Solid Waste Policy and Management Act. The DHEC regulation requiring counties wishing to build solid waste facilities to demonstrate a need did not foreclose county regulation of the flow of solid waste. Sandlands C & D, LLC v. County of Horry (394 S.C. 451, 716 S.E.2d 280 (2011).

The court held that the portion of the Town of Sullivan's Island's recently-enacted smoking ordinance imposing a $500 fine and/or 30 days in jail was invalid because it imposed a criminal penalty for a violation of the ordinance. The court, in Foothills Brewing v. City of Greenville (see below), had previously ruled that a local government may criminalize indoor smoking, but only to the extent consistent with state law. A violation of the Clean Indoor Air Act (§ 44-95-50) is a misdemeanor punishable by a fine of $25 to $100. Therefore, any penalty imposed by a local government greater than that imposed by the Clean Indoor Air Act would be inconsistent with state law and invalid. Beachfront Entertainment v. Town of Sullivan's Island, 379 S.C. 602, 666 S.E.2d 912 (2008).

Under Home Rule, local governments are granted broad powers from the state to enact regulations, resolutions, and ordinances to preserve health, peace, and good government. Pursuant to § 4-9-30(14) local laws must not be inconsistent with the constitution and general law of this state. A city ordinance prohibiting smoking in public places and levying a non-criminal fine does not conflict with the Clean Indoor Air Act (§ 44-95-20), and is therefore valid. Foothills Brewing v. City of Greenville, 377 S.C.355, 660 S.E.2d 264 (2008).

Georgetown County did not have authority to pass ordinances preventing gambling day cruises out of the county, given that the Johnson Act plainly indicated only the state could act to prohibit gambling day cruises, and at the time the ordinances were passed, South Carolina had not enacted a statute prohibiting gambling day cruises. Palmetto Princess, LLC v. Georgetown County, 369 S.C. 34, 631 S.E.2d 68 (2006).

The State Ports Authority (SPA), in a suit against Jasper County, claimed SPA had the exclusive authority to develop a port terminal on the Savannah River. Jasper County argued that under § 4-9-25, its proposed terminal is valid because the terminal will promote the general welfare of the county and enhance the county's economy. The court found that Jasper County is not preempted from the field of port development on the Savannah River because the General Assembly has not manifested an intent to preempt the passage of local laws. Jasper County has the power and authority to create a county-owned public marine terminal on the Savannah River. South Carolina State Ports Authority v. Jasper County, 368 S.C. 388, 629 S.E.2d 624 (2006).

A competitor argued that the Sumter County procurement ordinance's exemption from competitive bid requirements for contracts that are specifically approved by county ordinance violates the S.C.

Consolidated Procurement Code. The court stated that local governments should be afforded a reasonable degree of latitude in devising their own procurement ordinances and procedures. Glasscock Company, Inc. v. Sumter County, 361 S.C. 483, 604 S.E.2d 718 (2004).

A county's authority to regulate the location of sexually oriented businesses pursuant to its police powers granted in § 4-9-25 is not preempted by the South Carolina Local Government Comprehensive Planning Act (Planning Act). The Planning Act, while governing zoning, does not prohibit local enactments relating to zoning or land use. When § 4-9-25 is given liberal reading, as required, it must be concluded that a local ordinance regulating the location of sexually oriented businesses may be properly enacted. Greenville County v. Kenwood Enterprises, Inc., 353 S.C. 157, 577 S.E. 2d 428 (2003).

Counties have no power to enact a local ordinance prohibiting nude dancing because state criminal laws addressing the subject of public nudity do not prohibit nude dancing. Article VIII, § 14 of the South Carolina Constitution prohibits local governments from proscribing conduct that is not unlawful under state criminal laws governing the same subject. Diamonds v. Greenville County, 325 S.C.154, 480 S.E.2d 718 (1997).

A county may impose an ordinance prohibiting the possession of dangerous animals as long as the ordinance does not conflict with federal or state law and meets the requirements of due process and equal protection. Peoples Program v. Sexton, 323 S.C. 526, 476 S.E.2d 477 (1996).

Local option provisions that allow counties to ban video poker machine payouts based on the results of a countywide referendum are unconstitutional because they result in the disparate application of statewide criminal laws. The Supreme Court emphasized, however, that they do not view this decision as limiting the power of the General Assembly to delegate police power to local government. Martin v. Condon, 324 S.C.183, 478 S.E.2d 272 (1996).

The legislature intended to abolish the application of Dillon's Rule in South Carolina and restore autonomy to local government. When taken together, Article VIII of the S.C. Constitution and section 5-7-30 [the municipal general police power] bestow upon municipalities the authority to enact regulations for government services deemed necessary and proper for the security, general welfare, and convenience of the municipality or for preserving the health, peace, order and good government, obviating the requirement for specific statutory authorization so long as regulations are not inconsistent with the constitution and the general law of the state. Williams v. Hilton Head Island, 311 S.C. 417, 429 S.E.2d 802 (1993).

When a landowner has been called upon to sacrifice all economically beneficial use of his property in the name of the common good, even though the action may have been a valid use of the police power, he has suffered a taking under the Fifth Amendment of the U.S. Constitution. Lucas v. S.C. Coastal Council, 505 U.S. 1003 (1992).

In order for the state to prohibit all economically beneficial use of land without paying compensation, the regulation must do no more than duplicate the result an individual could achieve in court under state private nuisance law or by the state under its complementary power to abate nuisances that affect the public. Lucas v. S.C. Coastal Council, 505 U.S. 1003 (1992).

It is apparent that this grant of power for purposes of municipal legislation is as broad and comprehensive as it was within the power of the state to delegate. It is a grant of sovereign power of the state itself, limited alone by 1) the territorial confines of the municipality authorized to exercise it, and 2) the proviso that legislation thereunder "shall not be inconsistent with the laws of the state." City of Charleston v. Jenkins, 243 S.C. 205, 133 S.E.2d 242 (1963), interpreting a statute using essentially the same words to provide for general police powers for municipalities.

While the police power of the states left to them and not directly restrained by the federal constitution is incapable of exact definition and cannot be alienated or abridged by them by contract or otherwise, it has been often held that the Fourteenth Amendment to the federal constitution does not operate as a limitation upon the states in the authorized exercise of this power to enact and enforce such laws as in their judgment will protect the health, morals, safety, and general welfare of the public, where such laws or regulations are not palpably arbitrary, unjust, or unreasonable and do not unjustly or unreasonably impair private constitutional rights. Ford v. Atlantic Coast Line R. Co., 169 S.C. 41, 168 S.E. 143 (1932).

ATTORNEY GENERAL'S OPINIONS

In light of the general police powers of 4-9-25, it is likely a court would find a county has authority to adopt a "social host" criminal liability ordinance. Op. Atty. Gen., dated April 18, 2013.

A local government ordinance that created local agricultural districts, when construed liberally, would most likely be found to be a valid enactment of local police powers and would not violate the Home Rule Act. Op. Atty. Gen., dated February 22, 2013.

The constitutionality of a county ordinance requiring drug testing for elected officials residing in the county, including state officials, would be suspect. Federal case law has rejected a state statute requiring candidate drug testing on Fourth Amendment grounds. Op. Atty. Gen., dated November 07, 2011.

A county ordinance regulating alcohol sales hours is likely unenforceable within a municipality. The county could have this authority within an incorporated area with an agreement between the county and municipality to that effect. Op. Atty. Gen., dated August 10, 2011.

The only way a county ordinance is made applicable within the boundaries of a municipality is by

virtue of agreement between two political subdivisions and adoption of the county ordinance by a municipality. A town would only be able to obtain a permit for Sunday sales of alcohol if they agreed to and adopted the county ordinance allowing Sunday alcohol sales. Op. Atty. Gen., dated February 08, 2011.

By virtue of Article VIII, §7, of the S.C. Constitution, as well as §4-9-25, any ordinance adopted by a county must be consistent with the general law of the state, otherwise the ordinance is void. There appears to be no such state law preempting a county ordinance prohibiting any person to appear in a public place while wearing their pants more than 3 inches below their hips. It could be asserted that wearing pants below the hip, exposing certain areas of the body or intimate clothing could be argued as affecting public morals. Pursuant to § 20-7-400, the Family Court, rather than the county magistrate's court would have exclusive jurisdiction over alleged violations of the clothing ordinance. Op. Atty. Gen., dated September 22, 2008.

Litter control and regulation of nuisances fall within a county's authority, pursuant to § 4-9-25, to enact ordinances affecting health and general welfare. Such ordinances are the regulation of individual behaviors rather than land use. Therefore they would be applicable countywide rather than only in areas covered by the county zoning ordinance. Op. Atty. Gen., dated June 24, 2008.

Counties, like municipalities, generally have police powers. No municipality may by contract part with the authority delegated to it by the state to exercise the police power. As a result, a county would not be authorized to contract with a private security company for law enforcement purposes, even though services, while not police protection, would constitute private security. Op. Atty. Gen., dated April 07, 2008.

Pursuant to § 4-9-25, all counties have the authority to enact regulations not inconsistent with the constitution and general laws of this state. A county would not be authorized to enact an ordinance making it an offense to resist arrest within the trial jurisdiction of a magistrate or municipal court judge, since the penalties for such offense potentially exceed the limits of those courts. Op. Atty. Gen., dated August 16, 2007.

Act 290 of 2006, which provides for the regulation of agriculture facilities under state law and DHEC regulations, does not violate the Home Rule provisions of the state constitution. The act reaffirms the position that the legislature retains the right to enact general laws to limit the authority of counties, including the preemption of counties from further regulation in a particular area. The legislature must exercise its power of preemption by general law, not local legislation. Op. Atty. Gen., dated May 15, 2006.

Local governments may not enact ordinances that impose greater or lesser penalties than those established by state law. A county council is not authorized to create an ordinance against speeding, nor provide civil penalties and remedies for that violation. The General Assembly has addressed by state law the subject of speeding, which is the same matter that would be addressed by the proposed

ordinance. Op. Atty. Gen., dated February 01, 2006.

A proposed ordinance by a county to transfer property commonly referred to as “back alleys” to adjoining property owners may face several legal issues. There are no known mechanisms to compel a “condemnation in reverse,” thereby requiring landowners to accept property from the government. Pursuant to Article III, § 31 of the constitution, a county cannot give away its property unless it receives sufficient public benefit in return. There is a common law rule in which formal acceptance by the grantee is not required in respect to conveyance of real property by deed. However, the grantee will still possess a reasonable opportunity to dissent and disclaim the grant. Op. Atty. Gen., dated May 7, 2003.

In regards to counties creating an ordinance to set up a procedure to dispose of unclaimed inmate funds, political subdivisions are not free to adopt ordinances that are inconsistent with the constitution or general laws of the state. Unclaimed inmate funds are governed by two relevant statutes, the Uniformed Unclaimed Property Act, which is codified at S.C. Code Ann. § 27-18-10 et seq., and S.C. Code Ann. § 27-21-20 relating to the recovery and disposition of abandoned or stolen property by law enforcement agencies. It was opined in an attorney general letter dated January 6, 1998 that S.C. Code Ann. § 27-21-20, being the more specific of the two statutes, would be the correct one for law enforcement to follow in the disposition of abandoned property. Op. Atty. Gen., dated October 15, 2002.

A municipality may not provide water and sewer services within the “designated service area” of another municipality or political subdivision without the approval of the governing body of the municipality or political subdivision concerned. Unpublished Op. Atty. Gen., dated April 20, 1998.

Dillon's Rule, which stated that local governments had only those powers expressly granted, those necessarily or fairly implied as being incident to their express powers, or those essential to the accomplishment of the declared objects and purposes of the corporation, has been abolished. Unpublished Op. Atty. Gen., dated January 19, 1995.

A county has the authority to levy and collect impact fees on land being subdivided so long as the fee is reasonable and relates to the benefit the subdivision will receive. This authority is an exercise of the police power and is implied from § 6-7-10. 1990 Op. Atty. Gen., No. 90-47. *Ed. Note – For statutory authority for the levy and collection of impact fees see The South Carolina Development Impact Fee Act, §§ 6-1-910 et seq.*

A county is without the authority to adopt an ordinance that could either totally ban the sale and use of fireworks in unincorporated areas of the county or regulate areas where fireworks could be sold and used and times of such use. Adoption of such an ordinance would further regulate the possession, sale, or use of fireworks and would thus be invalid. 1990 Op. Atty. Gen., No. 90-53.
A county council has the authority under its police power to adopt an ordinance regulating signs or billboards, within constitutional limitations. Annual fees, as regulatory rather than revenue raising

measures, have been upheld, as have graduated fees based upon the size of the sign. 1986 Op. Atty. Gen., No. 85-16.

The mere fact that the state, in the exercise of the police power, has made certain regulations does not prohibit a municipality from exacting additional requirements. So long as there is no conflict between the two, and the requirements of the municipal ordinance are not in themselves pernicious, as being unreasonable or discriminatory, both will stand. The fact that an ordinance enlarges upon the provisions of a statute by requiring more than the statute requires creates no conflict therewith unless the statute limits the requirement for all cases to its own prescription. Unless statutes are contradictory in the sense that they cannot coexist, they are not deemed inconsistent because of mere lack of uniformity in detail. Unpublished Op. Atty. Gen., dated June 11, 1984, quoting 56 Am. Jur. 2d, Municipal Corporations § 374.

Where the legislature has occupied the field, an ordinance may be invalid as in conflict with a statute notwithstanding the absence of any actual grammatical conflict between the two. In such case the invalidity arises not from a conflict of language but from the conflict of jurisdiction that would result from dual regulation covering the same subject. Unpublished Op. Atty. Gen., dated August 22, 1984, quoting 62 C.J.S. Municipal Corporations § 143.

Both municipalities and counties have authority to regulate massage parlors pursuant to their general police powers, so long as such are not inconsistent or in conflict with § 40-29-10, et seq., or any other general law. 1984 Op. Atty. Gen., No. 84-66.

It is unlikely that a county may require property owners to dedicate land free of charge for a right-of-way, as such would be an unconstitutional deprivation of property. 1975-76 Op. Atty. Gen., No. 4525. *Ed. Note – The subject of this opinion was revisited after the adoption of § 4-9-25. Please refer to 1990 Op. Atty. Gen., No. 90-47 above.*

SECTION 4-9-30: Specific Powers Granted

EDITOR'S NOTE: This section grants counties a number of specific powers. Among these powers is the power of eminent domain, the power to levy ad valorem property taxes and uniform service charges, and the power to create special tax districts (taxing different areas at different rates based on the level of services provided).

Subsection (5), which deals with property taxes and the creation of special tax districts, is particularly complex. When dealing with subsection (5), it is important to read the entire subsection, as there are a number of conditions that follow the initial grant of authority that can completely change the meaning of the section.

The exception for the Board of Commissioners form no longer applies. That form has been declared unconstitutional by the South Carolina Supreme Court.

The General Assembly has substantially modified the revenue raising authority given to county councils in § 4-9-30. The modifications to the council's fiscal authority do not appear as amendments to § 4-9-30 itself, but are found in Chapter 1 of Title 6. Those statutes that address the county council's revenue-raising authority are contained in an SCAC publication entitled Revenue Resources For County Government and relate to real estate transfer fees, the definition of a service fee, limitations on the property tax millage rate for operating purposes, and business license fees.

2013 Act No. ___, Proviso 110.4 in the 2013 budget provides that a county government must fund its legislative delegation budget as approved by the delegation for FY 2013-2014, as authorized by law. If a county council does not meet that funding level, 125% of the shortfall must be deducted from the responsible county's Aid to Subdivisions allocation and forwarded to the legislative delegation of the county.

§ 4-9-30. Designation of powers under each alternative form of government except board of commissioners form.

Under each of the alternate forms of government listed in § 4-9-20, except the board of commissioners form provided for in Article 11, each county government within the authority granted by the Constitution and subject to the general law of this State shall have the following enumerated powers which shall be exercised by the respective governing bodies thereof:

(1) to adopt, use and revise a corporate seal;

(2) to acquire real property by purchase or gift; to lease, sell or otherwise dispose of real and personal property; and to acquire tangible personal property and supplies;

(3) to make and execute contracts;

(4) to exercise powers of eminent domain for county purposes except where the land concerned is devoted to a public use; provided, however, the property of corporations not for profit organized under the provisions of Chapter 35 of Title 33 shall not be subject to condemnation unless the county in which their service area is located intends to make comparable water service available in such service area and such condemnation is for that purpose. After any such condemnation, the county shall assume all obligations of the corporation related to the property and the facilities thereon which were condemned;

(5)(a) to assess property and levy ad valorem property taxes and uniform service charges, including the power to tax different areas at different rates related to the nature and level of governmental services provided and make

appropriations for functions and operations of the county, including, but not limited to, appropriations for general public works, including roads, drainage, street lighting, and other public works; water treatment and distribution; sewage collection and treatment; courts and criminal justice administration; correctional institutions; public health; social services; transportation; planning; economic development; recreation; public safety, including police and fire protection, disaster preparedness, regulatory code enforcement; hospital and medical care; sanitation, including solid waste collection and disposal; elections; libraries; and to provide for the regulation and enforcement of the above. However, prior to the creation of a special tax district for the purposes enumerated in this item, one of the following procedures is required:

(i) When fifteen percent of the electors in a proposed special tax district sign and present to the county council a petition requesting the creation of a special tax district, an election must be held in which a majority of the electors in that area voting in the election shall approve the creation of the special tax district, the nature of the services to be rendered and the maximum level of taxes or user service charges, or both, authorized to be levied and collected. The petition must contain a description of the proposed special tax district, the elector's signature and address. If the county council finds that the petition has been signed by fifteen percent or more of the electors resident within the area of the proposed special tax district, it may certify that fact to the county election commission. Upon receipt of a written resolution certifying that the petition meets the requirements of this section, the county election commission shall order an election to be held within the area of the proposed special tax district. The election ordered pursuant to this section is a special election and must be held, regulated, and conducted with the provisions prescribed by Chapters 13 and 17 of Title 7, except as otherwise provided in this section. The county election commission shall give at least thirty days' notice in a newspaper of general circulation within the proposed special tax district. The county election commission shall certify the result of the election to the county council and county council by written resolution shall publish the result of the election.

(ii) When a petition is submitted to the county council signed by seventy-five percent or more of the resident freeholders who own at least seventy-five percent of the assessed valuation of the real property in the proposed special tax district, the county council upon certification of the petition may pass an ordinance establishing the special tax district. For the purposes of this item, 'freeholder' has the same meaning as defined in Section 5-3-240. The petition must contain a designation of the

boundaries of the proposed special tax district, the nature of the services to be rendered, and the maximum level of the taxes or user service charges, or both, authorized to be levied and collected.

(iii) When the area of the proposed special tax district consists of the entire unincorporated area of the county, county council may pass an ordinance establishing a special tax district. For the purposes of this item 'unincorporated area' means the area not included within the corporate boundaries of a municipal corporation created pursuant to Chapter 1 of Title 5 or within a special purpose district created before March 7, 1973, to which has been committed the governmental service which the county council intends to provide through the proposed special taxing district unless the special purpose district has been dormant for five years or more. If, however, the same service intended to be rendered by the special taxing district is being rendered or is intended to be rendered within any portion of the territory of the special purpose district, then no such service may be rendered by the special taxing district without consent of the governing body of the special purpose district.

(b) In the ordinance establishing the special tax district, county council shall provide for the operation of the special tax district. The special tax district may be operated as an administrative division of the county, or county council may appoint a commission consisting of three to five members and provide for their terms of office.

(c) Notwithstanding any provision to the contrary, the county council shall not finance any service not being rendered by the county on March 7, 1973, by a countywide tax where the service is being provided by any municipality within that municipality or where the service has been budgeted or funds have been applied for as certified by the municipal governing body, except upon concurrence of the municipal governing body. For purposes of this subitem, 'municipality' means a municipal corporation created pursuant to Chapter 1 of Title 5.

(d) Before the issuance of any general obligation bonds to provide a service in a special tax district and the levy of a tax to retire the bonds at rates different from those levied in the remainder of the county related to the nature and level of government services to be provided in the special tax district, the county council shall first approve the issuance of the general obligation bonds and the levy of the tax to retire the bonds by ordinance.

(e) County council may by ordinance diminish boundaries of or abolish

a special tax district. It must first conduct a public hearing. Notice of the hearing must be given two weeks before it in a newspaper of general circulation in the tax district.

(f) After a special tax district is created, pursuant to the provisions of this item, the governing body of the county may, by ordinance, provide that the uniform service charge be collected on an annual, semiannual, quarterly, or monthly basis. The governing body by ordinance also may provide for monthly delinquency penalty charges by special tax notices.

(g) Any special taxing district created prior to the effective date of this act pursuant to this subsection, the creation of which would have been valid but for any inconsistency in or constitutional infirmity of this subsection as codified at the time of such creation, is hereby created and declared to be valid, and its existence is confirmed as of the date of its prior creation; provided, however, that any such special taxing district shall be subject to all provisions of this subsection as provided for in this act, including without limitation item (e).

(h) The creation of a street lighting system within a county may not disrupt the assignment of electric service rights by the Public Service Commission. The special tax district may not treat the street lighting system as one premises for the purchase of electric energy. Those lighting structures located in an area assigned by the South Carolina Public Service Commission to an electric supplier pursuant to Section 58-27-640, et seq., must be served by the designated electric supplier unless it consents to service by another supplier. Those light structures located in an unassigned area must be considered a single premises and may be served by an electric supplier pursuant to the customer choice provisions of Section 58-27-620 or by an electrical utility pursuant to the certificate of public convenience and necessity provisions of Section 58-27-1230 to serve the lighting structures planned for the unassigned areas.

After a special tax district is created pursuant to this item, the governing body of the county by ordinance may provide that the uniform service charge be collected on an annual, semiannual, quarterly, or monthly basis.

(6) to establish such agencies, departments, boards, commissions and positions in the county as may be necessary and proper to provide services of local concern for public purposes, to prescribe the functions thereof and to regulate, modify, merge or abolish any such agencies, departments, boards, commissions and positions, except as otherwise provided for in this title. Any county

governing body may by ordinance abolish a rural or other county police system established pursuant to Chapter 6 of Title 53 [of the Code of Laws, 1962] and devolve the powers and duties of the system upon the county sheriff, provided, however, that such an ordinance shall not become effective until the registered electors of the county shall first approve the ordinance by referendum called by the governing body;

(7) to develop personnel system policies and procedures for county employees by which all county employees are regulated except those elected directly by the people, and to be responsible for the employment and discharge of county personnel in those county departments in which the employment authority is vested in the county government. This employment and discharge authority does not extend to any personnel employed in departments or agencies under the direction of an elected official or an official appointed by an authority outside county government. Any employee discharged shall follow the grievance procedures as established by county council in those counties where the grievance procedures are operative, retaining all appellate rights provided for in the procedures. In those counties where a grievance procedure is not established, a county employee discharged by the chief administrative officer or designated department head must be granted a public hearing before the entire county council if he submits a request in writing to the clerk of the county council within five days of receipt of notice of discharge. The hearing must be held within fifteen days of receipt of the request. The employee must be relieved of his duties pending the hearing and if a majority of the county council sustains the discharge, it is final subject to judicial review, but if a majority of the county council reverses the dismissal, the employee must be reinstated and paid a salary for the time he was suspended from his employment.

The salary of those officials elected by the people may be increased but may not be reduced during the terms for which they are elected, except that salaries for members of council and supervisors under the council-supervisor form of government must be set as provided in this chapter;

(8) to provide for an accounting and reporting system whereby funds are received, safely kept, allocated and disbursed;

(9) to provide for land use and promulgate regulations pursuant thereto subject to the provisions of Chapter 7 of Title 6;

(10) to establish and implement policies and procedures for the issuance of revenue and general obligation bonds subject to the bonded debt limitation;

(11) to grant franchises in the areas outside the corporate limits of municipalities within the county in the manner provided by law for municipalities and subject to the same limitations, to provide for the orderly

control of services and utilities affected with the public interest; provided, however, that the provisions of this subsection shall not apply to persons or businesses acting in the capacity of telephone, telegraph, gas and electric utilities or suppliers, nor shall it apply to utilities owned and operated by a municipality; provided, further, that the provisions of this subsection shall apply to the authority to grant franchises and contracts for the use of public beaches;

(12) to levy uniform license taxes upon persons and businesses engaged in or intending to engage in a business, occupation or profession, in whole or in part, within the county but outside the corporate limits of a municipality except those persons who are engaged in the profession of teaching or who are ministers of the gospel and rabbis, except persons and businesses acting in the capacity of telephone, telegraph, gas and electric utilities, suppliers, or other utility regulated by the Public Service Commission and except an entity which is exempt from license tax under another law or a subsidiary or affiliate of any such exempt entity. No county license fee or tax may be levied on insurance companies. The license tax must be graduated according to the gross income of the person or business taxed. A business engaged in making loans secured by real estate is subject to the license tax only if it has premises located in the county but outside the corporate limits of a municipality. If the person or business taxed pays a license tax to another county or to a municipality, the gross income for the purpose of computing the tax must be reduced by the amount of gross income taxed in the other county or municipality.

(13) to participate in multi-county projects and programs authorized by the general law and appropriate funds therefore;

(14) to enact ordinances for the implementation and enforcement of the powers granted in this section and provide penalties for violations thereof not to exceed the penalty jurisdiction of magistrates' courts. Alleged violations of such ordinances shall be heard and disposed of in courts created by the general law including the magistrates' courts of the county. County officials are further empowered to seek and obtain compliance with ordinances and regulations issued pursuant thereto through injunctive relief in courts of competent jurisdiction. No ordinance including penalty provisions shall be enacted with regard to matters provided for by the general law, except as specifically authorized by such general law; and

(15) to undertake and carry out slum clearance and redevelopment work in areas which are predominantly slum or blighted, the preparation of such areas for reuse, and the sale or other disposition of such areas to private enterprise for private uses or to public bodies for public uses and to that end the General Assembly delegates to any county the right to exercise the power of eminent

domain as to any property essential to the plan of slum clearance and redevelopment. Any county may acquire air rights or subsurface rights, both as hereinafter defined, by any means permitted by law for acquisition or real estate, including eminent domain, and may dispose of air rights and subsurface rights regardless of how or for what purpose acquired for public use by lease, mortgage, sale, or otherwise. Air rights shall mean estates, rights, and interests in the space above the surface of the ground or the surface of streets, roads, or rights-of-way including access, support, and other appurtenant rights required for the utilization thereof;

(16) to conduct advisory referenda;

(16.1) to enact ordinances to regulate solicitation within the county by requiring permits therefore, establish criteria for issuing such permits and provide for a fine of one hundred dollars or thirty days' imprisonment for violations;

(16.2) to obtain injunctive relief in the Court of Common Pleas to abate nuisances created by the operation of business establishments in an excessively noisy or disorderly manner which disturbs the peace in the community in which such establishments are located. Such injunctive relief shall be initiated by petition of the County Attorney in the name of the County Council not sooner than ten days following noncompliance with a written notice to the owner of the offending establishment or his agent to cease and desist in the conduct or practice which disturbs the peace and good order of the area. The provisions of this item are supplemental to Chapter 43 of Title 15.

(17) to exercise such other powers as may be authorized for counties by the general law. The governing body of any county shall not create a special tax district, other than watershed district, any portion of which falls within the corporate boundaries of a municipality, except upon the concurrence of the governing body of the municipality.

HISTORY: 1962 Code § 14-3703; 1975 (59) 692; 1976 Act No. 601; 1976 Act No. 693; 1977 Act No. 74; 1982 Act No. 420; 1988 Act No. 312, § 1; 1988 Act No. 495, § 1; 1989 Act No. 176, § 2; 1991 Act No. 114, §§ 1, 2; 1994 Act No. 405; 1999 Act No. 113 § 21.

Cross References --

Constitutional provision permitting General Assembly to establish powers of county governments, see S.C. Const., art. 8, § 7.

Prohibition against political subdivision becoming joint owner of or stockholder in any company, association or corporation, see S.C. Const., art 10, § 11.

County and Municipal Employees Grievance Procedures Act, see §§ 8-17-110 to 8-17-160.

Repair, closing or demolition of unfit dwellings in counties, see §§ 31-15-310 to 31-15-400.

County housing authorities, see §§ 31-3-710 to 31-3-770.

Public Works Improvement Districts funded by assessments, see Title 4, Chapter 35.

Off duty private jobs of law enforcement officers, see Title 23, Chapter 24.
Police districts in unincorporated communities, see Title 23, Chapter 27.
Whistle Blower Act, see Title 8, Chapter 27.
Magistrates' court general jurisdiction, see § 22-3-550.
System for the collection of tolls, see § 57-5-1495.
County authority to close public roads, see Title 57, Chapters 9 and 17.
Public Safety Communications Centers (911), see Title 23, Chapter 47.
S.C. Local Government Comprehensive Planning Enabling Act of 1994, see § 6-29-310, et seq.
Mandatory building codes adoption and enforcement, see § 6-9-10 et seq.
Lot clearing charge liens, see § 31-15-330.
Real estate transfer fee prohibition, see § 6-1-70.
Construction moratorium, see § 6-1-110.
For prohibition on new local taxes, see § 6-1-310.
For restriction on business license taxes, see § 6-1-315.
Limitation on millage rate increases, see § 6-1-320.
Local fee definition and requirements, see § 6-1-330.
Local Accommodations Tax, see § 6-1-500 et seq.
Local Hospitality Tax, see § 6-1-700 et seq.
Capital Project Sales Tax, see § 4-10-300 et seq.
Confidentiality of returns required under § 4-9-30(12), see § 6-1-120.
The South Carolina Development Impact Fee Act, §§ 6-1-910 et seq.
Land Use Dispute Resolution Act, see § 6-29-800 et seq.
Building Codes, see § 6-9-5 et seq.
Mobile home title retirement, § 56-19-500 et seq.
Fireworks Prohibited Zones, § 23-35-175
Tattoos, see Chapter 34, Title 44

Research and Practice References --
56 Am. Jur. 2d Municipal Corporations, Counties and Other Political Subdivisions §§ 193-195, 309-336.
20 C.J.S. Counties §§ 40, 49, 108.
Annual Survey of South Carolina Law: Constitutional Law: Home Rule; Local Government. 29 S.C. L. Rev. 47 (1977).

CASE NOTES

§ 4-9-30: Generally

The Home Rule Act, while preventing the General Assembly from enacting special legislation and voiding any special legislation that contradicts the general law, does not operate retroactively to abolish all special legislation that was in effect in South Carolina prior to the enactment of the Home

Rule Act. Graham v. Creel, 289 S.C. 165, 345 S.E.2d 717 (1986).

Consistent with South Carolina Constitution Article 8, § 7 and pursuant to § 4-9-30, 1976 Code, each county under forms one through four of county government [§ 4-9-20, 1976 Code] may conduct its own governmental affairs without the necessity of periodic General Assembly intervention, much as municipalities have heretofore operated. Duncan v. County of York, 267 S.C. 327, 228 S.E.2d 92 (1976).

§ 4-9-30(3)

Upholding the Court of Appeals, the Court stated that the appointment or removal of a public officer (an SPD administrator) is a governmental function that cannot be impaired by an employment contract extending beyond the terms of governing body members. Such a contract is not binding upon successor bodies and the public policy considerations behind this are not changed by the bestowal of perpetual succession. Perpetual succession applies only to corporate business and proprietary functions. Piedmont Public Service District v. Cowart, 324 S.C. 239, 478 S.E.2d 836 (1996).

If the term of a contract extends beyond the term of the members of the governing body entering into the contract, the validity of the contract is dependent on the subject matter of the contract. The general rule is that if the contract involves the municipal corporation's business or proprietary powers, the contract may extend beyond the term of the contracting body and is binding on successor bodies if at the time the contract was entered into it was fair and reasonable and necessary or advantageous to the municipality. However, if the contract involves the legislative functions or governmental powers of the municipal corporation, the contract is not binding on successor boards or councils. When determining whether a contract is binding upon successor boards, the true test is whether the contract deprives a governing body or its successor of a discretion that public policy demands should be left unimpaired. Piedmont Public Service District v. Cowart, 319 S.C. 124, 459 S.E.2d 876 (1995).

A contract of employment for an administrator of a special purpose district involves the legislative or governmental power and a twenty-year term of employment is an unreasonable length of time for such a position. Piedmont Public Service District v. Cowart, 319 S.C. 124, 459 S.E.2d 876 (Ct. App. 1995).

§ 4-9-30(4)

A water and sewer company possesses an exclusive right to provide water and sewer services within a designated unincorporated area in the county because the county failed to affirmatively respond to the company’s notice to provide the services. Once the local government fails to respond within the time period provided for by § 33-35-90, the not-for-profit’s right to operate in the specified area is exclusive. Williamsburg Rural Water and Sewer Company, Inc. v. Williamsburg County Water

and Sewer Authority, 367 S.C. 566, 627 S.E.2d 690 (2006).

The Georgia Department of Transportation (GDOT) challenged Jasper County's notice of intent to condemn land owned by GDOT. Section 4-9-30(4) provides in part that a county "may exercise powers of eminent domain for county purposes except where the land concerned is devoted to a public use..." GDOT claimed the property is presently put to public use and therefore not subject to condemnation. In ruling for the county, the trial court found the dredging activity to be an indirect benefit to the public and not a public use. The appellate court found that although GDOT is an arm of a sovereign state, it has no power of eminent domain in South Carolina and thus the public use doctrine does not apply. Based on the County's lease arrangement with a private lessor, the court also found that the property will not be taken for public use and concluded that the condemnation would be unlawful. Georgia Department of Transportation v. Jasper County, 355 S.C. 631, 586 S.E. 2d 853 (2003).

The denial of a bulkhead permit application deprived the landowner of all economically beneficial use of land and constituted a taking for which landowner is entitled to compensation. McQueen v. South Carolina Coastal Council, 329 S.C. 588, 496 S.E.2d 643 (Ct.App. 1998), rev'd 340 S.C. 65, 530 S.E.2d 628 (2000), vacated and remanded by 533 U.S. 943, 121 S.Ct 2581, 150 L.Ed.2d 742 (2001) in light of Palazzolo v. Rhode Island, 533 U.S. 606, 121 S.Ct. 2448, 150 L.Ed.2d 592 (2001).

Because the landowner was not deprived of all economically viable use of his property, the city's refusal to issue a building permit until the landowner complied with the applicable building codes did not result in an uncompensated taking of landowner's property. Staubes v. City of Folly Beach, 331 S.C. 192, 500 S.E.2d 160 (Ct.App. 1998). Aff'd. 339 S.C. 406, 529 S.E.2d 543 (2000).

§ 4-9-30(5)

County brought suit against the state alleging that S.C. Code Ann. § 27-32-240 (Supp. 2000) governing taxation of time share units violated Article 10, §§ 1 and 2(a) of the constitution. Affirming the circuit court's decision that the state statute was constitutional, the Supreme Court examined the constitution and statute in light of Beaufort County's assertion that the legislature was prohibited from using different methods to determine fair market value in two subclasses of a particular class of property. The court determined that the County's interpretation of the constitution as mandating that the legislature uniformly value each subset of the section was misplaced. The court examined the ad valorem taxation process and concluded that § 1 did not prohibit the legislature from requiring different types of real property be valued the same, but instead required each category of property enumerated to retain the same assessment ratio as other property within its class. Beaufort County v. State of S.C. and Richard W. Holtcamp, 353 S.C. 240, 577 S.E. 2d 457 (2003).

A bond company, which employed several surety bondsmen who operated as agents for multiple insurance companies, challenged the Aiken County Clerk of Court's assessment of a fee for each

independent license the bondsmen possessed. The Court of Appeals reversed the lower court's decision to allow the Clerk to assess the fee finding that the statute authorized the Clerk to collect only one fee for each bondsman who held a license and not one for each license a bondsman held. The court examined the authorizing statute, S.C. Code Ann. § 38-53-100(D)(2002), with the common law rules of statutory construction. Additionally, the court gave deference to the South Carolina Department of Insurance's interpretation because it had the duty and responsibility of enforcing the statute. The Department of Insurance interpreted the fee as a charge that could only be assessed one time a year regardless of the number of licenses that a bondsman registered in the county possessed. Georgia-Carolina Bail Bonds v. County of Aiken, 354 S.C. 18, 579 S.E. 2d 334 (Ct. App. 2003).

The county's contention that § 4-9-25 granted it wide discretion to decide how to apply an ad valorem property tax exemption under a state statute was misapprehended. The only real discretion conferred upon the county was whether to adopt an ordinance consistent with the state statute. Riverwoods v. County of Charleston, 349 S.C. 378, 563 S.E.2d 651 (2002).

A joint endeavor between a public entity and private business is not constitutionally prohibited under Article 10, § 11 of the S.C. Constitution where the alliance does not create a risk that any losses will be shifted to the public. Taylor v. Richland Memorial, 329 S.C. 47, 495 S.E.2d 431 (1998).

An ordinance imposing a real estate transfer fee of .25% of the purchase price to pay for parks and recreational facilities is a uniform service charge and not a tax. In order to be a valid uniform service charge, the revenue generated must: (1) be used for the benefit of the payers, even if the general public also benefits; (2) be used only for the specific improvement contemplated; (3) not exceed the cost of the improvement; and (4) the fee must be uniformly imposed on all the payers. Campbell Construction Co. Inc. v. City of Charleston, 325 S.C. 235, 481 S.E.2d 437 (1997). *Ed. Note – This case addresses the law governing real estate transfer fees prior to the adoption of § 6-1-70.*

A local government uniform service charge is lawful if: (1) it is imposed for a particular governmental service rather than for the general support of the government; and (2) the persons required to pay the charge derive a special benefit from the improvement made with the charge proceeds that the general public does not receive. A $200 fee per auto with dealer and wholesale tags for improving county roads does not meet the test because the stated benefit inured to all car owners. Fairway Ford v. Greenville County, 324 S.C.84, 476 S.E.2d 490 (1996).

A county ordinance that imposes a solid waste disposal fee and requires multi-tenant property owners to be responsible for the fees of their tenants, unless there is a lease on file in the county records, is constitutional. Skyscraper Corp. v. County of Newberry, 323 S.C. 412, 475 S.E.2d 764 (1996).

Article 10, § 1 of the South Carolina Constitution requires uniformity in the assessment of all property and that uniformity is obtained when property taxes are levied equally within the county.

The uniformity requirements of Article 10, §§ 1 and 6 do not apply to the distribution of taxes. Westvaco Corp. v. S.C. Dept. of Revenue, 321 S.C. 59, 467 S.E.2d 739 (1995).

Local governments have the authority to adopt fees calculated as a percentage to be charged on accommodations or meals and beverages served at businesses licensed for on-premises consumption of alcohol to support tourism-related expenditures. Hospitality Assoc. of S.C., Inc. v. County of Charleston, 320 S.C. 219, 464 S.E.2d 113 (1995). *Ed. Note – This opinion addresses the law prior to the adoption of Act 138 of 1997, which modifies this area of the law.*

Taxes are levied on all property for the maintenance of county government. Although some services are not rendered in the incorporated areas, these services are still provided for the maintenance of county government and, therefore, benefit all the residents of the county. The equal protection clause does not require that mathematical symmetry be attained between the benefits received and the payment for those benefits. Davis v. County of Greenville, 313 S.C. 459, 443 S.E.2d 383 (1994).

Under § 4-9-30(5), counties can impose a service charge or user fee, such as a road maintenance fee, where it is a fair and reasonable alternative to increasing the general county property tax and is imposed upon those for whom the service is primarily provided. The amount of such fee and upon whom it is imposed are subject to the requirements of equal protection, reasonableness, and uniformity. Brown v. Horry County, 308 S.C. 180, 417 S.E.2d 565 (1992).

A service charge is imposed on the theory that the portion of a community that is required to pay the fee receives some special benefit as a result of the improvements with the proceeds of the charge and does not become a tax merely because the general public obtains a benefit. The Horry County road maintenance fees go into the county general fund to be used specifically for the maintenance and improvement of county roads. Because the fee proceeds are specifically allocated for road maintenance, the fee is a service charge under § 4-9-30(5). Brown v. Horry County, 308 S.C. 180, 417 S.E.2d 565 (1992).

Where a county ordinance violated state law by creating a new special purpose district that overlapped the old special purpose district, it was necessary for a new ordinance to be enacted in accordance with the prerequisites of § 4-9-30(5)(b). A subsequent ordinance, adopted pursuant to §§ 6-11-410 to 470, which eliminated any overlap, could not be given retroactive effect as remediation since the previous ordinance it sought to correct could not be validated. The county council's mere removal of the overlap from the prohibited district without full compliance with section 4-9-30(5)(b) could not resurrect the illegal previous ordinance. North Carolina Electric Membership Corp. v. White, 301 S.C. 274, 391 S.E.2d 571 (1990).

The creation of a special water and sewer district by county council ordinance following a public referendum did not violate the due process rights of owners of nuclear power plant located in the county; owners of nuclear plant lacked standing to challenge the dual ballot box procedure used in the referendum; and ad valorem assessment levied pursuant to an adopted ordinance was not an

unconstitutional taking of property. North Carolina Electric Membership Corp. v. White, 722 F. Supp. 1314 (D.S.C. 1989).

An ordinance enacted pursuant to § 4-9-30(5) authorizing the creation and operation of a county-wide sewage system in a special tax district of the entire unincorporated county area and levying a property tax on all taxable property in the area fully complied with the uniformity requirement of Article 10, § 6 of the South Carolina Constitution. Additionally, the ordinance did not violate the equal protection clause when applied to all residents within the unincorporated area, including those who received no sewage service as well as those who received sewage service by contract with existing facilities. Ex Parte Yeargin, 295 S.C. 521, 369 S.E.2d 844 (1988).

Act 499, which deals with assessments and special charges and not taxes, simply gives counties another way to comply with Article 10, § 12 of the state constitution, and provisions for creating special tax districts contained in § 4-9-30(5)(a)-(c) did not exhaust the power of the legislature to specify means by which counties could impose assessments, taxes, and charges required by Article 10, § 12. Robinson v. Richland County Council, 293 S.C. 27, 358 S.E.2d 392 (1987).

The authority to set the property tax rate belongs to the county governing body, not the county auditor. County of Lee v. Stevens, 277 S.C. 421, 289 S.E.2d 155 (1982).

§ 4-9-30(6)

County Council does not have the authority to determine the number of magistrates that a particular county will have. The structure of the magisterial branch of the judicial system is outside the authority of local governments pursuant to Article 8 of the S.C. Constitution. Sara G. Davis v. County of Greenville, 322 S.C. 73, 470 S.E.2d 94 (1996).

No county-wide referendum was required by § 4-9-30 prior to the passage of a county ordinance abolishing the county police commission and devolving its function upon the county council and/or the county administrator, because the county ordinance did not in any manner affect the duties or functions of the sheriff's department. Graham v. Creel, 289 S.C. 165, 345 S.E.2d 717 (1986). *Ed. Note – Portions of this case address language that was deleted from § 4-9-30(5) as part of the 1991 amendment.*

§ 4-9-30(7)

The clerk of court retired and the county passed its annual budget reducing the salary for the clerk of court. An interim clerk of court was appointed to serve the remainder of the retired clerk’s term. Section 4-9-30(7) prohibits the reduction of a salary during the term for which the official is elected and the county did not have the authority to reduce the interim clerk of court’s salary. Greenwood County Council v. Brooks, 362 S.C. 500, 608 S.E.2d 872 (2005).

Despite an employee's acknowledgment of a conspicuous disclaimer in an employee handbook, a contract of employment may still exist. The disclaimer and employee's employment status may still be a question for the jury. Conner v. City of Forest Acres 348 S.C.454, 560 S.E.2d 606 (2002) *Ed. Note – Although this case involves a municipality, the court's decision generally applies to all public entities.*

A county administrator acted within his authority in terminating the tax assessor for insubordination based on her refusal to withdraw her appeal from the assessment decision of the county board of assessment appeals and, thus, her termination did not fall within the public policy exception to the rule that an at-will employee may be terminated at any time for any reason or for no reason. Though the statute gave the tax assessor the right to appeal any modification or disapproval of any appraisal made, she was not required to do so. None of the statutes gave the tax assessor the sole discretion to determine which cases to appeal, and tax assessor, who served by appointment, was subject to discharge by administrator or county council. Antley v. Shepherd, 340 S.C. 541, 532 S.E.2d 294 (Ct. App. 2000), aff'd as modified 564 S.E.2d 116 (2002).

The Home Rule Act does not empower the county administrator to enforce county personnel policies upon employees of elected officials. A county's authority is not expanded beyond that explicitly granted in the statute. Eargle v. Horry County, 344 S.C. 449, 545 S.E.2d 276 (2001).

Absent express statutory authority, a county administrator or the county governing body has no authority to suspend the employees of an elected official, even if provided for in the county's personnel policies. Eargle v. Horry County 335 S.C.425, 517 S.E.2d 3 (Ct. App. 1999). *Ed. Note – This is an opinion issued en banc overturning the prior decision issued by the Court of Appeals in Eargle v. Horry County.*

Because Appellants are probate court employees, the county had no authority over Appellants, and thus could not have wrongfully terminated Appellants. Further, because Appellants were employees of an elected official, the probate judge, and were not county employees, they were not entitled to a grievance hearing under § 4-9-30(7). Unpublished opinion, Amos-Goodwin v. Charleston County Council and Finney, 161 F.3d 1(4th Cir. 1998).

The plain language of Section 4-9-30(7) supports the authority of the county administrator to discipline county employees, including the temporary suspension of county employees in the office of elected officials. Eargle v. Horry County, Opinion withdrawn upon grant of hearing en banc. 1998 WL 518478 (Ct. App. 1998).

City ordinances that provide for employee fringe benefits do not generally create contractual rights. Statements in employee handbooks do not create any legitimate expectation that fringe benefits provided for therein will continue unchanged for any specific amount of time. To hold otherwise would substantially impair a governmental entity's ability to meet the changing needs of the government and of employees. The court pointed out that governmental entities should have more

flexibility than businesses with respect to employer–employee relationships. Alston v. City of Camden, 322 S.C. 38, 471 S.E.2d 174 (1996).

Payment of leave benefits to elected officials does not violate § 4-9-30(7) or Article 3, § 30 of the S.C. Constitution. This is consistent with the general statutory authority providing that county government may determine the compensation for county officers. Bales v. Aughtry, 302 S.C. 262, 395 S.E.2d 177 (1990).

A deputy sheriff who was fired by the sheriff was not entitled to a discharge hearing before the county council under § 4-9-30(7) since the statutory grievance procedure is inapplicable to deputies. Botchie v. O'Dowd, 299 S.C. 329, 384 S.E.2d 727 (1989).

Although § 23-13-10 grants a sheriff unreviewable employment and discharge authority over deputies in terms of a council-implemented grievance procedure because deputies are not included within the term “employees” used in § 4-9-30(7), § 23-13-10 did not preclude judicial review of a claim of wrongful discharge based upon a violation of the deputy's constitutional free speech rights. To hold otherwise would strip the courts of their power of review and thereby place a sheriff's discharge decision beyond the reach of the very constitution that creates the sheriff's office. Botchie v. O'Dowd, 299 S.C. 329, 384 S.E.2d 727 (1989).

For purposes of personnel system policies under § 4-9-30(7), the term “employees” does not include deputies but does include sheriff's department personnel other than deputies. Heath v. County of Aiken, 295 S.C. 416, 368 S.E.2d 904 (1988).

A complaint filed by a former employee against her former employer, the county treasurer, failed to allege that the employee was fired because she had attempted to file a grievance against her employer where the complaint failed to allege that the county had adopted a grievance procedure pursuant to § 8-17-120 and failed to allege that the employee had filed a grievance in accordance with the county's procedures. Jones v. Gilstrap, 288 S.C. 525, 343 S.E.2d 646 (Ct. App. 1986).

In a declaratory judgment action to determine whether a county council had the authority to order a circuit solicitor to reinstate an investigator to his former position of chief investigator in the solicitor's office, § 4-9-30 was not controlling over § 1-7-405 providing that employees of a circuit court solicitor serve at his pleasure. Anders v. County Council for Richland County, 284 S.C. 142, 325 S.E.2d 538 (1985).

The effect of subsection 7 of this section in a council-supervisor form of county government is that the county council is empowered to create and fund positions for the operation of county government, but personnel to fill such positions shall be appointed by the county supervisor under § 4-9-420 (12). Consequently, the power to appoint and discharge a county attorney under the council-supervisor form of county government rests with the county supervisor. Poore v. Gerrard, 271 S.C. 1, 244 S.E.2d 510 (1978).

§ 4-9-30(9)

Section 4-9-30(9) authorizes counties to provide for land use regulation subject to the provisions of Chapter 7 of Title 6 (zoning), including internal configuration requirements for "peep booths" in sexually oriented businesses. Centaur v. Richland County, 301 S.C. 374, 391 S.E.2d 165 (1990).

City planning to locate sewage treatment facility just across the line into a county other than the one in which the city was located, was not required to obtain approval of the county in which the facility would be located, where the city's facility would not be in competition with the county's facility or prevent the county from exercising its taxing or regulatory authority. Anderson County v. Combined Utility Com., 290 S.C. 85, 348 S.E.2d 359 (1986).

§ 4-9-30(12)

The amount of federal and state taxes paid on tobacco products should be excluded from the calculation of gross receipts on income for purposes of a business license tax. Crenco Food Stores v. City of Lancaster, 318 S.C. 278, 457 S.E.2d 338 (1995).

Video poker fee statutes, §§ 12-21-20 and 12-21-2746, place a limit on municipal and county fees on video poker machines. Section 5-7-30, the municipal business license tax authorization, would allow a business license tax only to the extent the levy is not inconsistent with general laws of the state. Crenco Food Stores v. City of Lancaster, 318 S.C. 278, 457 S.E.2d 338 (1995).

Business licenses authorized under § 4-9-30(12) are excise taxes and, therefore, no prohibition on the use of the revenue exists. Carter v. Linder, 303 S.C. 119, 399 S.E.2d 423 (1990).

§ 4-9-30(14)

A two-step process must be followed to determine if a local ordinance is valid. First, determine whether the adopting entity had the authority to adopt the ordinance. Second, if the entity had the authority to adopt the ordinance, the ordinance must be not inconsistent with the constitution or general laws of the state. If the answer to either condition is no, then the ordinance is invalid. Hospitality Assoc. of S.C., Inc. v. County of Charleston, 320 S.C. 219, 464 S.E.2d 113 (1995).

Under § 4-9-30(14), providing that no ordinance including penalty provisions may be enacted with regard to matters provided for by the general law except as specifically authorized by such general law, a county could not enact and enforce an ordinance prohibiting the sale, possession, and discharge of fireworks in a particular area during certain periods, and establishing a penalty for its violation, since the General Assembly has created an extensive system for controlling the possession, sale, storage, and use of fireworks in §§ 23-35-10 et seq., a law that does not provide for the enactment of regulatory ordinances by counties. Terpin v. Darlington County Council, 286 S.C. 112, 332 S.E.2d 771 (1985).

Since a member of county council is legislating when he votes to enact an amendment to a county zoning ordinance, he is entitled to immunities that common law traditionally has provided to forestall interference with legislative functions. Bruce v. Riddle, 464 F. Supp. 745 (D.S.C. 1979), aff'd 631 F.2d 272 (4th Cir. 1979).

ATTORNEY GENERAL'S OPINIONS

§ 4-9-30: Generally

A county has the authority to impose impact fees on school districts through its authority as set out in § 4-9-30. A county would probably not be able to exempt a school district from an impact fee, but a court would most likely find legislation creating an exemption constitutional. This opinion also provides that churches and non-profits would be subject to impact fees unless exempted by legislative action, so long as the legislation exempts all churches or non-profits equally. The opinion follows that reasoning in holding that the legislature would also have to create an exemption for small businesses, provided all entities are treated equally. Op. Atty. Gen., dated October 18, 2010.

Pursuant to § 4-9-30, a county could not enact proposed ordinances related to penalties and sentences within the magistrate court's jurisdiction. A charter or ordinance cannot lower or be inconsistent with a standard set by state law. The criminal jurisdiction of a magistrate court extends to offenses with penalties of a fine not exceeding $500 or imprisonment not exceeding thirty days, or both. Therefore, a county could not enact an ordinance that would increase those penalties. Op. Atty. Gen., dated January 15, 2008.

In § 4-9-30, the legislature afforded specific powers to counties, including the power to make appropriations for functions and operations of the county. The provisions of § 4-9-30, when read in conjunction with the Capital Projects Sales Tax Act (§ 4-10-300 et seq.), do not appear to limit a county's ability to appropriate funds to other entities providing water service. A referendum, pursuant to Article VIII, Section 16 of the S.C. Constitution, would not be required if the county does not use the appropriated funds to construct, purchase, or otherwise operate the water system. A referendum would be required if the county itself constructed, owned, or operated the system. Op. Atty. Gen., dated June 25, 2008.

A county could not adopt, wholesale, the provisions of state laws on animal cruelty into a county ordinance since some provisions of state law provide penalties in excess of the jurisdiction of the magistrate's court. Pursuant to § 4-9-30, a county is authorized to enact ordinances and provide penalties for violations thereof, not to exceed the penalties within the jurisdiction of the magistrate's courts. Op. Atty. Gen., dated December 20, 2007.

§ 4-9-30

The legislature passed § 4-9-30 granting the power to assess property and levy ad valorem property taxes and uniform charges. This section provides county government with the option of imposing service charges or user fees upon those who use county services in order to reduce the tax burden that otherwise would be borne by the taxpayers generally. Op. Atty. Gen., dated October 05, 2006.

A county possesses police power to enact ordinances to further the health and welfare of its residents through § 4-9-30 and Art. VIII, Sec. 17 of the S.C. Constitution. However, under Art. VIII, Sec. 14 of the S.C. Constitution, local governments may not enact ordinances that impose greater or lesser penalties than those of state law. To the extent that a proposed ordinance makes illegal conduct that state law does not prohibit and alters the potential punishment for such conduct, a court would most probably hold the ordinance to be in violation of Art. VIII Sec. 14 of our constitution. Amending the ordinance to not be inconsistent or irreconcilable with state law would probably allow both to coexist. Op. Atty. Gen., dated August 15, 2001.

Pursuant to Part I, § 3 of the Home Rule Act, which is uncodified, the county has an obligation to provide office space and appropriations for the operation of the county legislative delegation. Unpublished Op. Atty. Gen., dated April 18, 1996.

The constitutional requirement of separation of powers does not apply to local subdivisions. An analysis of the powers, duties, and responsibilities contained throughout Title 4 of the S.C. Code shows that county council exercises powers of all three types. Even before the Home Rule Act, it was well accepted that municipal governing bodies exercised legislative, executive, and judicial powers. Unpublished Op. Atty. Gen., dated Jan. 23, 1995.

A county council would not have the statutory authority to limit the number of terms or number of years that might be served. 1993 Op. Atty. Gen., No. 93-45.

A county is not required to collect the clean-up cost for a lot under an agreement with a municipality to collect property taxes due the municipality because the clean-up cost is not a tax. 1989 Op. Atty. Gen., No. 89-9.

The governor will continue to appoint governing body members for special purpose districts in accordance with the local law creating them. 1985 Op. Atty. Gen., No. 85-35.

The county council may not turn over to a private eleemosynary corporation the operation of a juvenile detention center, as such would be prohibited by the Home Rule Act. 1976-77 Op. Atty. Gen., No. 77-157.

County governing bodies become vested with the Home Rule Act powers either upon their adoption of one of the forms of government pursuant to [§ 4-9-10, 1976 Code], or on July 1, 1976, pursuant to [§ 4-9-10, 1976 Code]. 1974-75 Op. Atty. Gen., No. 4043.

§ 4-9-30(2)

Any conveyance of public property or use of public funds must serve a public purpose. Whether a particular transaction meets these requirements is a fact-specific inquiry for determination by county council. Courts will not disturb county council's determination absent "a clear showing of fraud or abuse of authority." Op. Atty. Gen., dated January 12, 2012.

Counties may legally accept funds donated to the county by private citizens for use in the prosecution of criminal cases to defray the expenses to taxpayers for such use. Persons donating such funds can legally condition the gift upon use for a specific purpose. If the gift is conditioned, it must be used for that purpose or revert to the donor. Once these funds are accepted, they become public funds, despite being donated by private citizens, and are subject to the same restrictions and limitations as other public funds. Unpublished Op. Atty. Gen., dated Jan. 25, 1995.

State law appears to permit the ownership and operation of a railroad line or other transportation service by a county, municipality or other political subdivision. 1989 Op. Atty. Gen., No. 89-27.

A county council can deed real property to another political subdivision without receiving compensation. 1975-76 Op. Atty. Gen., No. 4525.

§ 4-9-30(3)

Since the Board of Election and Registration is a county office, the county would have the same responsibility in providing legal advice or paying for legal representation for the board as it would for any other county agency or office. Unpublished Op. Atty. Gen., dated March 16, 1998.

A prisoner who has been properly sentenced by the municipal court may not be prematurely released by the county stockade if it deems the prisoner unacceptable for its facility. Unpublished Op. Atty. Gen., dated July 8, 1998.

Choosing legal counsel is an exercise of council's governmental or legislative function and it would be improper for a county council to enter into a contract with a county attorney to provide general legal services beyond the term for which the members of the council were elected. Unpublished Op. Atty. Gen., dated January 17, 1997. *Ed. Note – This opinion does not address the authority of county council to directly hire the county attorney. See § 4-9-630.*

Section 24-5-10 obligates the sheriff to accept prisoners properly arrested. Generally, however, cities are responsible for the care and maintenance of prisoners arrested or convicted of violations within the jurisdiction of the Municipal Court and counties are responsible for the care and maintenance of prisoners arrested or convicted of violations within the jurisdiction of the Court of General Sessions. Therefore, counties, pursuant to their contract authority, should contract with municipalities to determine the financial responsibility for housing municipal prisoners in county

jails. Unpublished Op. Atty. Gen., dated January 28, 1997.

Generally, cities are responsible for the care and maintenance of prisoners arrested or convicted of violations within the jurisdiction of the Municipal Court and counties are responsible for the care and maintenance of prisoners arrested or convicted of violations within the jurisdiction of the Court of General Sessions. Therefore, counties, pursuant to their contract authority, should contract with municipalities to determine the financial responsibility for housing municipal prisoners in county jails. Unpublished Op. Atty. Gen., dated August 22, 1996.

There is no absolute statutory or constitutional prohibition on county council's entering into a contract in the waning days of the terms of some council members; whether legal grounds exist for avoiding the contract entered into by outgoing or "lame duck" county council would depend on the facts and circumstances surrounding adoption of the contract. 1990 Op. Atty. Gen., No. 90-62.

Contracts executed by county councils and county agencies for terms in excess of one year are binding; however, the contract should contain a provision subjecting it to cancellation if funds are not available in succeeding years. 1983 Op. Atty. Gen., No. 83-89.

§ 4-9-30(4)

A county has the authority to levy and collect impact fees on land being subdivided so long as the fee is reasonable and relates to the benefit the subdivision will receive. This authority is an exercise of the police power and is implied from § 6-7-10. 1990 Op. Atty. Gen., No. 90-47. *Ed. Note – For statutory authority for the levy and collection of impact fees see The South Carolina Development Impact Fee Act, §§ 6-1-910 et seq.*

It is unlikely that a county may require property owners to dedicate land free of charge for right-of-way, as such would be an unconstitutional deprivation of property. 1975-76 Op. Atty. Gen., No. 4525. *Ed. Note – The subject of this opinion was revisited after the adoption of § 4-9-25. Please refer to 1990 Op. Atty. Gen., No. 90-47 above.*

§ 4-9-30(5)

A county could likely appropriate funds for tuition assistance for residents attending a public technical institution within the county. Appropriation of funds for a "public purpose" is expressly authorized by § 4-9-30(5), and public education has been found by the courts to be a valid public purpose. The inclusion of any private institution in such a tuition assistance program would implicate Article XI, section 4 of our state constitution, which prohibits the use of public funds "for the direct benefit of any religious or other private educational institution." Op. Atty. Gen., dated March 20, 2012.

It may be concluded that § 4-9-30(5) allows a county council to levy taxes for fire protection and

provide fire protection services to some areas of the county and not others, generally excluding municipalities that provide the same service. County governments posses the power to tax different areas of the county at different rates depending on the nature and level of services being provided, as long as the areas not receiving fire protection services are not being levied a tax to support that service. A county has the authority to contract with a special purpose district (SPD) to provide fire protection services within the county but outside of the boundaries of the SPD. This can be accomplished only through a contract entered into between two political subdivisions, in this case a county and SPD, pursuant to Article 8, Section 13 of the state constitution. Op. Atty. Gen., dated May 18, 2011.

The Attorney General's Office advised a county to be cautious when making expenditures from a road maintenance fee to make sure those expenditures are narrowly tailored to the purposes for which the fee was intended. A court could find the fee to be a county-wide tax and thus invalid if that criteria is not met. Op. Atty. Gen., dated February 18, 2011.

Sections 4-9-30(5) and 6-1-330 specifically allow counties to charge and collect service or user fees. Since a school district must comply with the zoning ordinances enacted by a county, that county has the authority to require a development site review of the district's facilities. Since there is no provision that would prohibit a county from charging a fee to a school district for this type of review, such a fee would be allowed so long as the fee itself is valid. Op. Atty. Gen., dated February 24, 2010.

Section 4-9-30(5)(a) specifically allows counties to appropriate funds for general public works. Counties may choose to enter into agreements with municipalities to provide certain services and may appropriate funds with regard to such services, so long as the county's interests are served. The decision to appropriate funds to a municipality for these purposes is limited in that it must further a county purpose and must be with the permission of the municipality's governing body. There is no provision in the state constitution or statutes prohibiting a county from choosing which municipalities to provide services to, so a county's decision to restrict funding based on municipal population does not violate state law. Op. Atty. Gen., dated January 11, 2010.

Section 4-9-30(5) designates specific powers to counties, including the power to levy uniform service charges for sewage collection and treatment. The S.C. Supreme Court has developed a four-pronged test to determine whether a fee is valid as a uniform service charge: 1) the revenue generated is used to the benefit of the payors, 2) the revenue generated is used solely for specific improvements contemplated, 3) the revenue generated does not exceed actual cost of the improvements, and 4) the fee is uniformly imposed on all the payers. Under this test the county may not impose a service charge to a town's residents without providing a benefit, namely sewer service. Op. Atty. Gen., dated December 03, 2008.

Section 4-9-30(5)(a), giving counties the authority to levy taxes and fees and expend such revenues, specifically recognizes economic development as a purpose for which county governments can

assess and levy taxes. The use of such funds may extend to an economic development project located within the corporate limits of a city or town located in the county. Moreover, § 4-9-30 gives counties the authority to appropriate funds for general public works, to include parking facilities open to the public, even where the parking facility would indirectly benefit a facility of a private religious-based university. Op. Atty. Gen., dated October 28, 2008.

By its expressed terms, § 4-9-30(5) provides counties with additional and supplemental methods for funding improvements. This is consistent with the intent of the drafters of the Home Rule Act to provide county governments with the option of imposing service charges or user fees upon those who use county services in order to reduce the tax burden that otherwise would have been borne by taxpayers generally. However, the validity of an ordinance adopting a fire and rescue protection fee of $.50 per acre for all county residences must be adopted using the specific methodology prescribed by the General Assembly in § 6-1-330. Op. Atty. Gen., dated March 10, 2008.

Section 4-9-30(5)(e) specifically provides that a county council may by ordinance abolish a special tax district. A county could change by ordinance the composition of a commission where the members of the commission are appointed by county council and the commission and terms were established by ordinance. One council cannot restrict the authority of its successors to amend an ordinance. Op. Atty. Gen., dated April 07, 2008.

A county ordinance enacted after 1999, adopting a development impact fee for school facility construction would be invalid. While § 4-9-30(5)(a) authorizes counties to impose development impact fees, school facilities are not among the enumerated “public facilities” specifically defined by the South Carolina Development Impact Fee Act of 1999 (§ 6-1-910 et seq.). If a county enacted an impact fee ordinance including such school facilities prior to the 1999 passage of the Impact Fee Act, they would be grandfathered by § 6-1-1060 until that fee terminates. Op. Atty. Gen., dated February 20, 2008.

Section 4-9-30(5)(a) lists fire protection as a function of a county and includes it among other activities generally considered functions and operations performed by county governments. The statutes contained in Chapter 19 of Title 4 specifically authorize governing bodies to create, operate, and maintain systems for fire protection, and also provide authority for a county to levy ad valorem taxes in order to accomplish these functions. However, based on § 4-9-30(5)(a), providing fire protection services is a general operating purpose. Any increase in the millage rate levied by a county for the purpose of providing fire protection services, whether or not provided pursuant to Chapter 19 of Title 4, is limited by § 6-1-320(A), unless the increase is due to one of the exemptions provided under § 6-1-320(B). Op. Atty. Gen., dated June 26, 2007.

County council, with some restrictions, has authority to impose impact fees on new development. A county can impose a service charge, as in the situation here, where it is a fair and reasonable alternative to increasing the general property tax, and is imposed upon those for whom the service is rendered. Op. Atty. Gen., dated October 05, 2006.

County council has the authority pursuant to § 4-9-30 to impose a road maintenance fee and to appropriate the proceeds according to its ordinance. A fee is valid if 1) the revenue generated is used to benefit the payers of the fee, even if the general public benefits, 2) the revenue generated is used only for the specific improvements contemplated and does not exceed the cost of the improvements, and 3) the fee is uniformly imposed on all payers. Op. Atty. Gen., dated August 24, 2006.

The creation of a special tax district to set taxes in the district at a reduced rate, as compared to the county, is not authorized by any constitutional or statutory provision, and would violate Article X, § 6 of the state constitution. The services to be rendered by a special tax district must be specified in order to create such a special tax district pursuant to § 4-9-30. If residents in a proposed special tax district submit a petition that complies with the requirements of § 4-9-30(5)(a)(I), the county must hold an election allowing all residents of the proposed special tax district to vote to approve the creation of the district. However, if such residents vote to approve the district, the county retains discretion to decide whether or not to enact an ordinance creating the district. Op. Atty. Gen., dated January 24, 2006.

County council possesses broad discretion to maintain a surplus with respect to its road maintenance fee. Such authority includes the power to carry over such funds or revenues generated by the charge from year to year. Any challenge to the council's action carries a heavy burden of proof, and it must be demonstrated in particular that the revenue generated by the fee exceeds the cost of the improvement, or that there is little or no benefit to the property for which the assessment is being charged to improve. Op. Atty. Gen., dated October 21, 2005.

A county, based on § 4-9-30(5), has the authority to make appropriations to operate a water service system/facility, acquire a quarry site and establish an operating department to oversee the provision of an auxiliary water source to the county's existing customers. Op. Atty. Gen., dated April 24, 2003.

If a county fire district was created by an Act of the General Assembly, then the control of the equipment used by the district would most likely be within the control of the fire district's board or commission. If on the other hand the county council has assumed responsibility for providing fire protection services and purchasing the fire equipment to be used pursuant to § 4-9-30, then it appears that the council itself would ultimately be responsible for the equipment used to provide fire protection services. Op. Atty. Gen., dated May 22, 2002.

Section 4-9-30 permits the county to tax different areas at different rates depending on the level of service. The law gives some deference to the county's discretion in the exercise of its taxing authority such that its distribution of varying amounts of funding among different fire districts would be legal. Op. Atty. Gen., dated July 31, 2001.

County Council may appropriate money for the funeral expenses of deceased indigent persons as

county governments are authorized to appropriate and expend public funds for services and property that serve a public purpose under S.C. Code § 4-9-30. Expenditures of this nature would have to be appropriated under procedures found in S.C. Code § 4-9-130. Op. Atty. Gen., June 25, 2001.

Section 4-9-30 permits the county to tax different areas at different rates depending on the level of service and the law gives some deference to the county's discretion in the exercise of its taxing authority such that its distribution of varying amounts of funding among different fire districts would be legal. Op. Atty. Gen., dated July 31, 2001.

Upon dissolution, the area that comprised a dissolved municipality becomes a part of the unincorporated area of the county, and this area would be treated under Section 12-37-450 in a fashion similar to those unincorporated areas of the county. Unpublished Op. Atty. Gen., dated March 23, 1998.

Where the South Carolina Department of Transportation has legally abandoned a portion of a state road, such portion reverts to the local authorities. State law also empowers the county governing body to abandon or discontinue a county road so long as such is for the benefit of the public and not solely for a private individual. Nothing prohibits or precludes a county, upon making a decision to abandon or discontinue a road, to dispose of whatever interest it retains by quitclaim deed. Unpublished Op. Atty. Gen., dated September 4, 1997.

A municipal ordinance adopted pursuant to § 5-7-30 (the municipal equivalent of § 4-9-30(5)) to impose a two percent fee on accommodations for a beach preservation fund would probably be valid. However, a court could find the ordinance to be in conflict with the state accommodations tax and the local option sales tax and find the ordinance invalid, nonetheless. 1993 Op. Atty. Gen., No. 93-76.

The property tax exemption provisions of § 12-37-220 do not apply to a separate fee imposed for the disposal of solid waste. Unpublished Op. Atty. Gen., dated Aug. 15, 1994.

It does not appear that a county could contract with a private security firm to serve as guards at a county detention facility. Unpublished Op. Atty. Gen., dated June 8, 1993.

A county may incur bonded indebtedness to assist in the construction of municipal water lines, if county council determines that public and corporate purposes are being served. A county's levying of taxes merely for the benefit of the municipality would violate §§ 5 and 7 of Article 10 of the S.C. Constitution. 1991 Op. Atty. Gen., No. 91-49.

County council is without authority to abate or waive a property tax penalty. 1990 Op. Atty. Gen., No. 90-6. *Ed. Note – But see § 12-45-420, which grants a committee composed of the county auditor, county treasurer, and county assessor the authority to waive, dismiss, or reduce a penalty levied against real or personal property in the case of an error by the county.*

Only county council could properly allocate seized gambling proceeds for employee's moving expenses. However, such expenses should not be paid in absence of specific authorization. 1990 Op. Atty. Gen., No. 90-8.

The governing body of the county is without authority to extend the date that penalties are imposed by § 12-45-180 for late payment of property taxes. 1990 Op. Atty. Gen., No. 90-17.

A county has the authority to levy and collect impact fees on land being subdivided so long as the fee is reasonable and relates to the benefit the subdivision will receive. This authority is an exercise of the police power and is implied from § 6-7-10. 1990 Op. Atty. Gen., No. 90-47. *Ed. Note – For statutory authority for the levy and collection of impact fees see The South Carolina Development Impact Fee Act, §§ 6-1-910 et seq.*

Counties and school districts are prohibited from levying a tax only on industrial property. The tax levy must be uniformly applied to all taxable property within the political entity. 1989 Op. Atty. Gen., No. 89-6.

Collection of garbage in a county may be paid for by levying uniform service charges, collecting a county-wide property tax, or creating a special tax district. Practices in effect in the county on March 7, 1973 and other circumstance must be taken into account to decide which means should be used to pay for the service. 1989 Op. Atty. Gen., No. 89-58.

In order to levy a countywide property tax to provide garbage service, a county must have been providing the service on March 7, 1973, exclusively; if a municipality was providing similar service in 1973, the county must obtain the consent of the municipality's governing body to levy the tax; a uniform service charge for garbage collection may be judicially endorsed. A county treasurer may not be empowered to sell the property of a person failing to pay the service charge. 1989 Op. Atty. Gen., No. 89-58.

A county may create a special tax district to provide garbage service and may levy an ad valorem tax on property within the district, provided that the levy is equal and uniform to all persons and property within the tax district. 1989 Op. Atty. Gen., No. 89-58.

In abolishing a special tax district, the safest and most prudent course would be to follow the same procedures set forth in § 4-9-30(5) for creation of such a district. 1985 Op. Atty. Gen., No. 85-65.

Pursuant to 1985 Act No. 163, which amended § 23-19-10, sheriffs are required to turn over to county all fees and commissions collected by them, but it is doubtful whether the amounts equivalent to fees and commissions previously retained by the sheriff as part of his compensation may be withheld by the county council from the sheriff's compensation. Because the compensation of sheriffs cannot be reduced during their terms, amounts equivalent to those fees and commissions retained prior to enactment of Act 163 should be reimbursed to the sheriff by county council as part

of his compensation. 1985 Op. Atty. Gen., No. 85-96.

County council cannot decrease its funding to the salary of the auditor and treasurer by the amount of an increase in state funding for those officers. 1985 Op. Atty. Gen., No. 85-113.

The term "special purpose district" contained in Act No. 488 of 1984 is broad and open-ended. There are many factors to be considered in determining whether an entity is a special purpose district under terms of Act No. 488 and actual determination must be made on individual basis. 1984 Op. Atty. Gen., No. 84-132.

A county may not appropriate funds to a reserve account for use and expenditure in subsequent years. 1983 Op. Atty. Gen., No. 83-32. *Ed. Note – See § 12-43-296, adopted after this opinion was issued, for a specific grant of authority to maintain reserve accounts.*

The county council is without authority to provide a penalty for late payment of property taxes that is in conflict with general law. 1979 Op. Atty. Gen., No. 79-85.

The auditor's salary was set for the 1979-80 fiscal year by the budget adopted for that year and cannot be later reduced during the year or the elected term. 1979 Op. Atty. Gen., No. 79-103.

County council cannot require the sheriff to deposit his fees and commissions into the county general fund. 1974-75 Op. Atty. Gen., No. 4216. *Ed. Note – The statutory law discussed in this opinion has been changed. Please see 1985 Op. Atty. Gen., No. 85-96 above.*

County council may assess residential property owners a uniform charge for garbage collection and, at the same time, assess industries a service charge for waste collection that varies with the quantity of waste collected; an unpaid service charge for garbage collection cannot constitute a lien upon property. 1976-77 Op. Atty. Gen., No. 77-19.

A county governing body is authorized to create a watershed conservation district with taxing authority, pursuant to § 4-9-30, 1976 Code. 1976-77 Op. Atty. Gen., No. 77-173.

A county council may not provide county funds for a secretary to be employed by a federal agency. 1976-77 Op. Atty. Gen., No. 77-198.

The provisions of the Home Rule Act do not empower the county council to alter the salary of the county legislative delegation's secretary once the delegation has set it. 1976-77 Op. Atty. Gen., No. 77-222.

County council is not authorized to provide general county funds to a private, eleemosynary hospital corporation to be used for the payment of interest on the latter's bonded indebtedness. 1976-77 Op. Atty. Gen., No. 77-229.

The county council is without authority to void or negate the valuations of the property as ascertained by the assessor for the 1977 tax year and may not therefore revoke the same and substitute the 1976 tax base. The governing body is now without authority to alter the ratio upon which the assessed values of property were ascertained for the 1977 tax year and reflected upon the tax duplicate. 1976-77 Op. Atty. Gen., No. 77-319.

§ 4-9-30(6)

The county council would improperly alter or expand the statutory duties of the treasurer if it were to require the treasurer to operate and maintain a satellite office at a certain location in the county. It would be within council's discretion to increase the treasurer's budget to allow additional personnel at a satellite office. If the treasurer chose not to fill the position as appropriated by council, he would be prohibited from using the funds for another purpose. Op. Atty. Gen., dated May 07, 2012.

Section 4-9-30 provides the powers afforded to county governments. Under a council-administrator form of county government, council must go through the county administrator regarding county personnel, including internal auditors. Op. Atty. Gen., dated April 04, 2008.

County council does not possess the authority to assign the duties of the delinquent tax collector to the county treasurer. The office of county treasurer is created by general law and thus only the General Assembly may alter the duties of that office. Op. Atty. Gen., dated April 15, 2005.

A county governing body possesses no control or authority over a Pretrial Intervention Program (PTI). The PTI program is a creature of state law and exists at the judicial circuit rather than at the county level. The PTI program is under the immediate supervision and control of the solicitor who is a state officer rather than a county officer. Funding for the PTI program is generated pursuant to state law at the judicial circuit level. There is simply little or no relationship between the county governing body and the solicitor's PTI program. Op. Atty. Gen., dated February 23, 2004.

County council is without authority to freeze funding for magisterial position duly appointed. 1991 Op. Atty. Gen., No. 91-26.

It is extremely doubtful that a county council could withdraw the appropriations for a particular deputy sheriff's position. Therefore it is doubtful that a county council could impose a hiring freeze upon the sheriff's department. 1991 Op. Atty. Gen., No. 91-48. *Ed. Note – This opinion is based upon language deleted from § 4-9-30(5) in the 1991 amendment.*

The appointment of a code enforcement officer, pursuant to § 4-9-145, to provide supplemental law enforcement for a municipality could constitute a conflict with § 4-9-30(5) inasmuch as it could duplicate duties and functions already performed by the sheriff. Also, such might be considered a restructuring or reorganization of the sheriff's department; therefore, such an appointment would not

be authorized absent compliance with the referendum requirements of § 4-9-30(5). 1991 Op. Atty. Gen., No. 91-56. *Ed. Note – This opinion was based upon language deleted from § 4-9-30(5) in the 1991 amendment and language deleted from § 4-9-145 in the 1992 amendment.*

The members of a county board of mental retardation are to be appointed by ordinance of the county council when the board is created under § 4-9-30; the State Department of Mental Retardation must approve the disbursement of any funds under its control to such a board subject to a contract between the department and the board. 1989 Op. Atty. Gen., No. 89-38.

Any action by a county council through its budgetary process cannot interfere with the sheriff's role as chief law enforcement officer in his county. 1989 Op. Atty. Gen., No. 89-55. *Ed. Note – This opinion was based upon language that was deleted from § 4-9-30(5) as part of the 1991 amendment.*

County council does not have the authority to eliminate township magistrates, nor does it have the authority to terminate salary payments to the township magistrates. 1974-75 Op. Atty. Gen., No. 4119.

Only a court could make an absolute conclusion as to whether action by a county council in not funding certain positions within the sheriff's department would constitute a “reorganization” or “restructuring” of the sheriff's department and thus require a referendum. 1987 Op. Atty. Gen., No. 87-72. *Ed. Note – This opinion was based upon language that was deleted from § 4-9-30(5) as part of the 1991 amendment.*

§ 4-9-30(7)

A county supervisor would be considered an elected official, for purposes of 4-9-30(7), and accordingly would not fall under the purview of the personnel policies and procedures of the section. Employees of a county supervisor would not be subject to employment and discharge policies of the county, but it remains unclear whether the employees of a supervisor would have grievance rights. S.C. Atty. Gen. Op. April 02, 2013.

A county treasurer has exclusive authority over the employment and discharge of personnel within his or her office pursuant to § 4-9-30(7). This authority includes the right to both determine the number of employees needed for the orderly conduct of business and to prescribe their duties. This also includes the right of the elected official to determine the location where the services of his or her employees are needed. Furthermore, although the employees of a county treasurer are generally subject to personnel policies developed by the county council, the administrator lacks the authority to enforce such personnel policies in any manner that would infringe upon the treasurer’s authority to make any decision concerning the employment and discharge of employees within his or her office. S.C. Atty. Gen. Op. May 07, 2012.

A clerk of a probate court is not an employee for purposes of county personnel policies under § 4-9-

30(7) because the clerk is an employee of an elected official. Therefore, a county ordinance requiring resignation of a county employee running for a county office is not applicable to a clerk of the probate court who becomes a candidate for probate judge. Op. Atty. Gen., dated February 21, 2012.

A county veterans' affairs officer, appointed by the legislative delegation, is not a "county employee" for purposes of a county's grievance policies pursuant to § 4-9-30(7). However, the county veterans' affairs officer is a county officer rather than a state officer and, therefore, would not be subject to the state's personnel policies in this regard. There is no legislative authority empowering the legislative delegation to adopt grievance policies applicable to the veterans' affairs officer, and any attempt by the delegation to do so may be deemed void by a court. Op. Atty. Gen., dated November 18, 2011.

Since a county veterans' affairs officer serves at the pleasure of the legislative delegation, he is only accountable to this authority. The veterans' affairs officer may be removed by a majority of the Senators and House members serving on the county delegation, and the officer is solely responsible for the hiring and discharge of his employees. Op. Atty. Gen., dated October 21, 2011.

County councils have broad authority with regard to the operations and functions of county government. They also possess broad authority with regard to budgetary decisions. However, a county cannot reduce the funding of an elected official's office to the extent that it precludes the proper functioning of that office nor do they have the authority to employ or discharge personnel under the direction of county elected officials. Op. Atty. Gen., dated April 29, 2011.

Simultaneously serving as a member of the County Board of Voter Registration and working as staff for the County Department of Voter Registration would be a conflict under Bradley v. City Council of City of Greenville because each Board member is using his or her power to "confer an office upon himself." Bradley, 212 S.C. 389, 397 (1948). Also, this would violate § 4-9-30(7) because the county would be creating a position for an employee that they have no authority to create because the members of the commission are appointed by the Governor and is thus a position "outside county government." Op. Atty. Gen., dated July 01, 2010.

Section 4-9-30(7) gives counties the authority to implement personnel policies. Such policies and laws may restrict the political activity of public employees if doing so serves an important governmental interest such as promoting efficiency and integrity in the discharge of official duties and insulating public employees from political pressures so as to protect their individual rights. Such a personnel policy would likely be upheld as constitutional. Op. Atty. Gen., dated December 16, 2009.

While all employees of a county library are subject to the provisions of §4-9-30(7), the legislature intended for §4-9-36 to provide more specific authority regarding personnel issues and the chief librarian. The hiring, termination, and disciplinary procedure for the chief librarian is granted,

pursuant to §4-9-36, to the library system's board of trustees rather than the county administration. Where one statute addresses an issue in general terms and another statute addresses the same issue in more specific terms, the more specific statute will be considered an exception to, or qualifier, of the general statute. Op. Atty. Gen., dated July 11, 2008.

Counties are prohibited by §4-9-30(7) from terminating the employees of public officials. Where grant funds or other special revenue funds were used to hire additional sheriff's deputies, it is doubtful whether action could be taken by a county council to discontinue funding for those positions. Council would be required to pick up where the grant ended, even if the purpose for the hiring may no longer exist and the county did not provide the original funding for the position. Op. Atty. Gen., dated October 26, 2007.

Because the appointing authority for county election commissioners is an authority outside county government, pursuant to §4-9-30(7), the General Assembly has mandated that county council possesses no authority to appoint election commission clerks. Op. Atty. Gen., dated October 22, 2007.

County governing bodies have the responsibility for employing and discharging county personnel. This employment and discharge authority does not extend to any personnel employed in departments or agencies under the direction of an elected official or an official appointed by an authority outside county government. A county government's ability to decrease appropriations to the office of an elected official is limited in that the appropriations cannot be decreased to the extent that they prevent the office from functioning properly or abolish the office. Op. Atty. Gen., dated January 08, 2007.

Pursuant to §4-9-30(7), a county council would be authorized to increase the compensation to a sheriff for any increased duties brought about by his providing law enforcement services to a municipality during his term of office. Op. Atty. Gen., dated August 25, 2006.

County council possesses the authority to delegate certain administrative powers and duties to third parties, which would in all likelihood include the county director. So long as council does not delegate legislative or policy making powers to others but confines its delegation of authority to administrative and ministerial powers, a court would probably conclude such delegation is not an unlawful delegation of power. Op. Atty. Gen., dated March 10, 2004.

Neither the county nor the county legislative delegation has the authority to extend the period for paid military leave beyond forty-five days as found in S.C. Code § 8-7-90. County personnel policies are inapplicable to veterans' affairs officers. Op. Atty. Gen., dated April 11, 2001.

Personnel classification and salary schedules for county employees are determined by county council pursuant to authority granted by § 4-9-30(7). Council members are specifically excluded from section 4-9-30(7) and their salary and compensation must be set in accordance with § 4-9-100.

Op. Atty. Gen., dated October 18, 2001.

As county council possesses the power to develop personnel system policies and procedures for county employees, the power to regulate the hours during which county offices are open for business appears inherent. If county council acts legislatively in this regard, then the county supervisor, pursuant to his duty to execute the policies and legislative actions of council, must act accordingly. In the absence of county council action, the county supervisor, as chief administrative officer of the county and possessing the power to direct and coordinate operational agencies of the county may be authorized to regulate the hours of operation of county departments. Unpublished Op. Atty. Gen., dated September 30, 1999.

County council has the final decision making authority in the hiring of an employee of the county Election and Voter Registration Commission. However, this authority is in the form of the power to approve or disapprove of the employment of an individual presented to them by the commission. Unpublished Op. Atty. Gen., dated February 12, 1998.

While a county veteran's affairs officer may be considered a "county employee" in a particular set of circumstances, it is likely that a court would conclude that these circumstances would not include classification as a "county employee" for purposes of § 4-9-30(7). Unpublished Op. Atty. Gen., dated October 27, 1998.

County council may designate the coroner as a part-time employee and does not have to give the coroner pay increases, as long as council does not decrease the coroner's salary during his term of office. Unpublished Op. Atty. Gen., dated October 22, 1996.

The determination of holidays for county employees is a general personnel policy matter within the county council's authority to determine, but council has no authority to determine the holidays that may be taken by elected officials. Unpublished Op. Atty. Gen., dated October 29, 1996.

Jailers and jail administrators serving under the authority of the sheriff are not subject to the county grievance procedure adopted pursuant to § 4-9-30(7). 1993 Op. Atty. Gen., No. 93-77.

In the case of an appointed county treasurer under the council-manager form of government, the treasurer is subject to the personnel policies adopted pursuant to § 4-9-30(7). 1991 Op. Atty. Gen., No. 91-31.

The county treasurer is without authority to override a directive of the county governing body that county office buildings be closed in observance of Martin Luther King's birthday. 1990 Op. Atty. Gen., No. 90-17.

Heath v. County of Aiken, 302 S.C. 178, 394 S.E.2d 709 (1990) is solely applicable to § 4-9-30(7) as it read prior to its being amended by the General Assembly. However, with the amendment, no

employee of an elected official, such as a sheriff, who is discharged by such official, is entitled to a grievance hearing under § 4-9-30(7). 1988 Op. Atty. Gen., No. 88-68.

There appears to be no provision in state law that would allow an elected official such as a county supervisor to receive payment for unused vacation or annual leave, partly because there appears to be no provision of law granting such leave to an elected official and further because such a payment could be deemed extra compensation in violation of Article 3, § 30 of the state constitution. 1987 Op. Atty. Gen., No. 87-27. *Ed. Note – This opinion is no longer valid in light of Bales v. Aughtry, 302 S.C. 262, 395 S.E.2d 177 (1990). See Case Notes for this code section.*

Because the county supervisor is directly elected by the people, the county's personnel system policies and procedures are inapplicable to the supervisor. 1987 Op. Atty. Gen., No. 87-27(2).

Under the council-administrator form of government, a county administrator, rather than a county council itself, would have authority to employ and discharge a zoning administrator once that position is established. 1986 Op. Atty. Gen., No. 86-48.

In the absence of express statutory authority, it is doubtful whether classified state employees could negotiate lower salaries with their employers except in certain situations, such as budget reductions, where appropriated funds may not be available. The General Assembly could, if it so desired, expressly authorize such salary reductions. Arguably, city and county employees can, under present law, negotiate lower salaries with their employers subject to certain limitations such as one found in § 4-9-30(7). However, the more cautious approach would require express statutory authority with respect to these employees as well. With respect to school districts, again it is doubtful whether these entities can, under present law, negotiate lower salaries with their employees except in contemplation of loss by funding or other similar circumstances. Thus, if school districts desire to negotiate lower salaries with their employees, express statutory authorization is probably required. 1986 Op. Atty. Gen., No. 86-57.

A sheriff has absolute authority regarding employment and discharge of personnel within his department; such personnel are subject to “general personnel system policies and procedures” of county; county anti-nepotism ordinance would be inapplicable to any employment decisions made by sheriff; applications for employment should be handled by county and not sheriff. 1985 Op. Atty. Gen., No. 85-7. *Ed. Note – Sheriffs are subject to the state anti-nepotism statute, § 8-13-750.*

The hiring and discharge of deputy sheriffs are matters solely within prerogative of sheriff, and it is extremely doubtful whether action could be taken by county council to withdraw appropriation for particular deputy sheriff's position so as to result in termination of a particular deputy. 1985 Op. Atty. Gen., No. 85-82. *Ed. Note – This opinion was based in part on language deleted from § 4-9-30(5) as part of the 1991 amendment.*

After adoption of a form of government provided by the Home Rule Act, county council can initially

set the salary of its members; however, if the county council later changes the salary of its members, that change cannot become effective until after the next general election for county council members when the terms of office of the members elected therein begin. 1976-77 Op. Atty. Gen., No. 77-225.

A county is authorized to develop personnel system policies and procedures that would include magistrates' secretaries, but such policies and procedures could not regulate the employment and termination of such secretaries. 1983 Op. Atty. Gen., No. 83-7.

A county governing body cannot alter the duties of the treasurer. Any duplication of duties by the treasurer and finance department may be eliminated by providing that the treasurer's office performs such duties. Duties assigned to the treasurer cannot be removed from that office. 1984 Op. Atty. Gen., No. 84-15.

§ 4-9-30(8)

County treasurers are generally the proper parties to receive, hold and disburse county funds under state law. It would appear that county council would improperly diminish the statutory duties of the treasurer if it were to create and maintain separate accounts for county funds or disburse funds without the knowledge or consent of the treasurer. Such an alteration of the treasurer’s statutory duties could violate state law absent some authority allowing such actions by the county council. Op. Atty. Gen., dated March 10, 2004.

Pursuant to 1985 Act No. 163, which amended § 23-19-10, sheriffs are required to turn over to county all fees and commissions collected by them, but it is doubtful whether amounts equivalent to fees and commissions previously retained by sheriff as part of his compensation may be withheld by county council from sheriff's compensation; because compensation of sheriffs cannot be reduced during their terms, amounts equivalent to those fees and commissions retained prior to enactment of Act 163 should be reimbursed to sheriff by county council as part of his compensation. 1985 Op. Atty. Gen., No. 85-96.

A county governing body cannot alter the duties of the treasurer. Any duplication of duties by the treasurer and finance department may be eliminated by providing that the treasurer's office performs such duties. Duties assigned to the treasurer cannot be removed from that office. 1984 Op. Atty. Gen., No. 84-15.

County council cannot require the sheriff to deposit his fees and commissions into the county general fund. 1974-75 Op. Atty. Gen., No. 4216. *Ed. Note – The statutory law that is discussed in this opinion has been changed. Please see 1985 Op. Atty. Gen., No. 85-96 below.*

§ 4-9-30(9)

Section 48-23-205 preempts county regulation of forestry activities on forest land. While §48-23-

205 provides the authority for local governments to regulate development activities, which is found in §4-9-30(9), it is likely that courts will find that regulation related to forestry activities is preempted. Such regulation includes any local buffer requirements, forestry-associated fees, notification requirements or regulation of roads, including requiring access permits for access to public roads, if the regulation is forestry-related. Op. Atty. Gen., dated June 12, 2012.

Pursuant to §4-9-30(9), counties have the authority to provide for land use and promulgate regulations pursuant thereto, subject to the provisions of Chapter 7 of Title 6. A county ordinance that requires commercial timber operations to comply with county zoning regulations in certain zones appears to be a proper exercise of authority by the county. While several provisions in the regulations place restrictions on the use of some classifications of property with regard to commercial timber operations, they do not make forestry operations a nuisance in violation of the S.C. Forest Management Protection Act (§50-2-10 et seq.). Op. Atty. Gen., dated June 11, 2007.

A local planning commission created by ordinance by the municipal council or the county council, or both, is required by law to develop a comprehensive plan. Under the Planning Act, in the absence of a comprehensive plan, a county council would not have the authority to enact land use regulations on such things as hog farms and junkyards. Unpublished Op. Atty. Gen., dated March 3, 1998.

If a county enacts a zoning ordinance pursuant to the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 that modifies or renames the zoning classification of property zoned pursuant to Section 6-7-10 et seq of the South Carolina Code of Laws, it would not be considered a re-zoning of property requiring the posting of notice on or adjacent to the property. Unpublished Op. Atty. Gen., dated June 15, 1998.

To continue the planning and zoning process in the future, counties are required to proceed under the South Carolina Local Government Comprehensive Planning Enabling Act and enact ordinances that comply therewith. Unpublished Op. Atty. Gen., dated June 16, 1998.

Pursuant to their zoning authority, counties may regulate the placement of sexually oriented businesses. As long as the counties do not impede the ability of these businesses to convey their message, restricting these businesses to certain areas does not violate their constitutional rights. Unpublished Op. Atty. Gen., dated January 30, 1997.

A county ordinance regulating the placement of manufactured housing pursuant to the county's zoning authority and in the exercise of the county's police powers to protect the health, safety, and general welfare of the public, is entitled to a presumption of validity and is most likely to be found constitutional, so long as the ordinance does not conflict with state or federal law. Unpublished Op. Atty. Gen., dated August 14, 1996.

§ 4-9-30(10)

County or municipality incurring general obligation debt would be required to pledge full faith, credit, and tax and power to repay debt. No political subdivision has been authorized by constitution or statute to incur such indebtedness and then obligate another entity to repay it; instead, such repayment would be made from general revenue sources of subdivision incurring debt. 1990 Op. Atty. Gen., No. 90-20.

The provisions of the Home Rule Act do not expressly or impliedly empower a county council to enter into long-term borrowing agreements. The provisions of new Article 10 of the South Carolina Constitution of 1895, as amended, which becomes effective November 30, 1977, authorizes a county to incur indebtedness only through the "bonded debt" route or through a revenue-producing project of a special source. 1976-77 Op. Atty. Gen., No. 77-264.

§ 4-9-30(11)

Section 4-9-30(11) gives counties the authority to implement personnel policies. Under such policies a county has authority to grant franchises for ambulance services operating within the county. Although the EMS Act is comprehensive and applicable statewide, the legislature did not intend to preclude counties from passing ordinances governing who may provide ambulance service within their boarders. A county may require entities operating ambulance services within its borders to obtain a franchise, but a county does not have the authority to limit the number of these franchises. Moreover, if franchises are limited, a county may not be entitled to state action immunity from federal antitrust laws, and a court could find that such an ordinance creates an illegal monopoly. Op. Atty. Gen., dated June 12, 2009.

§ 4-9-30(12)

In the case of a county imposing a business license tax under § 4-9-30(12), this statute requires that the business license tax be calculated based on gross income rather than net income. Op. Atty. Gen., dated April 23, 2012.

An exemption from state or federal income tax does not necessarily create an exemption from a county business license tax authorized by § 4-9-30(12). Gross income for business license tax purposes should be calculated according to the definition in the license ordinance, provided that definition is not inconsistent with constitutional or statutory law. Op. Atty. Gen., dated April 2, 2012.

The application and materials gathered by county officials in an inspection or audit conducted to enforce a business license tax imposed pursuant to § 4-9-30(12), which becomes the matter of an appeal by the taxpayer, may be properly disclosed to the members of county council for that appeal. As a result of the Freedom of Information Act, those materials become fully disclosable to the public

as a result of being a public record and as part of a public meeting of county council. Unpublished Op. Atty. Gen., dated June 28, 2000.

As a general rule, a county may impose a business license tax upon nonresidents who perform an act or engage in an occupation within the county limits. However, in a questionable case, the activities of a person or business must be reviewed to determine whether those activities constitute doing business within the county. Unpublished Op. Atty. Gen., dated May 19, 1999.

Section 58-23-620 of the South Carolina Code of Laws precludes the imposition by a county of its business license tax upon the holders of Class E or F Certificates issued to such businesses by the Public Service Commission under authority of § 58-23-510, et seq. 1989 Op. Atty. Gen., No. 89-130.

A business license ordinance that contains great disparities between the tax rates applied to different classes of businesses is highly suspect and in all probability denies equal protection of the laws to all businesses within the county. Section 38-7-100 precludes the imposition of county license taxes on certain insurance companies. 1989 Op. Atty. Gen., No. 89-26. *Ed. Note – The prohibition contained in § 38-7-100 discussed above was deleted when that code section was revised. The prohibition was subsequently amended into § 4-9-30(5).*

A county, under the authority conferred upon it by § 4-9-30(12), may impose a license tax upon a municipality that owns a water system extending into unincorporated areas of the county. 1982 Op. Atty. Gen., No. 82-56.

Classifications may be created for county license tax purposes provided the same are reasonable; however, it is doubtful that a tax on one class to the exclusion of all other persons or businesses would be reasonable. 1976-77 Op. Atty. Gen., No. 77-343.

§ 4-9-30(13)

The authority to expend "C" funds rests with the county transportation committee and the transfer of authority to county council to expend these funds would be improper. In addition, a seat on the county transportation committee is probably an office for dual office holding purposes and county council members may not be appointed to the county transportation committee. Unpublished Op. Atty. Gen., dated December 18, 1996. *Ed. Note – After the issuance of this opinion, § 12-28-2740 was amended to allow the county legislative delegation to abolish the county transportation committee and devolve its powers and duties on the governing body of the county.*

§ 4-9-30(14)

Section 4-9-30(14) gives the counties the authority to enact ordinances for the implementation and enforcement of powers granted by §4-9-30, including the transfer of interest in real property. Given

the binding effect that a transfer of a utility easement would have on the county, and the fact the transfer of an easement on the county's property constitutes a legislative act, such a transfer would be required by ordinance, rather than by resolution. The generally-accepted function of a resolution is that they are merely directory but do not have binding effect. Op. Atty. Gen., dated February 17 2009.

Based on the Supreme Court's interpretation of § 4-9-30(14) a county would have no authority to further regulate the possession, sale, or use of fireworks. Authority for counties and cities to regulate fireworks must be granted by the General Assembly and as such must be specific and clear to override the Court's holding in Terpin v. Darlington County Council, 286 S.C.112, 332 S.E. 2d 771 (1985). In Terpin, the Court concluded that a Darlington County ordinance attempting to regulate fireworks was invalid because the General Assembly had created a system for firework regulation and § 4-9-30(14) stated in part that "No ordinance including penalty provisions shall be enacted with regard to matters provided for by the general law..." Op. Atty. Gen., dated March 21, 2003.

A county appears to have no express authority to impose a lien for the collection of solid waste disposal fees. McQuillin Municipal Corporations suggests that in the absence of a statute specifically enabling counties to impose a lien for charges for the collection of solid waste, the county cannot create the lien by ordinance. Op. Atty. Gen., dated November 20, 2000.

A county ordinance may only be made applicable within an incorporated area by virtue of an agreement between the county and municipality. Unpublished Op. Atty. Gen., dated May 20, 1996.

It is constitutional for county council to adopt an ordinance that regulates public nudity as long as the ordinance does not impose a greater penalty than state law or prohibit conduct that state law permits. Unpublished Op. Atty. Gen., dated October 18, 1995.

County Council possesses the power to adopt an ordinance providing criminal penalties for making excessive noise, and such ordinance does not violate the state constitution or Home Rule Act. 1985 Op. Atty. Gen., No. 85-105.

Both municipalities and counties have authority to regulate massage parlors pursuant to their general police powers, so long as such are not inconsistent or in conflict with § 40-29-10, et seq., or any other general law. 1984 Op. Atty. Gen., No. 84-66.

The county council may not by ordinance provide for additional fines in magistrates' court for use by the Commission on Alcohol and Drug Abuse. 1983 Op. Atty. Gen., No. 83-47.

The county council may by ordinance require a permit to move a mobile home provided the same does not conflict with § 31-17-310 of the 1976 Code of Laws and the permit is a means to insure payment of the ad valorem taxes; a person who owns a mobile home on December 31 of the preceding tax year and subsequently sells the same is liable for the tax; the lien for unpaid property

taxes attaches to and follows the property. 1978 Op. Atty. Gen., No. 78-5.

Under the Home Rule Act, municipal ordinances may prescribe a maximum punishment not exceeding $200 or 30 days, whereas county ordinances may prescribe punishment not to exceed those of magistrates' courts of the county; county ordinances may not require penalties concerning litter, gun control or freedom of information; municipal ordinances may set penalties relating to firearms if they do not conflict with general laws of the state; however, municipal ordinances may not deal with freedom of information. 1975-76 Op. Atty. Gen., No. 4355. *Ed. Note – Since the time of this opinion, the magistrate's court criminal jurisdiction has been raised to $500 fine, 30 days imprisonment, or both. See, § 22-3-550.*

Under the Home Rule Act, county council cannot create bird sanctuaries by ordinance. 1975-76 Op. Atty. Gen., No. 4496. *Ed. Note – This opinion was issued prior to the adoption of § 4-9-25 and may no longer hold true.*

A county ordinance that would prohibit the disposal of industrial solid waste in a disposal site previously permitted by the South Carolina Department of Health and Environmental Control would be construed as void if challenged in the courts of the State of South Carolina. 1975-76 Op. Atty. Gen., No. 4520.

County Council has no authority to amend the requirements of a statewide act. 1974-75 Op. Atty. Gen., No. 4093.

The qualified electors of a county have no authority under the Home Rule Act to remove a member of the governing body of the county from office through the enactment of an ordinance by initiative and referendum. 1974-75 Op. Atty. Gen., No. 4104.

§ 4-9-30(16)

Pursuant to § 4-9-30(16), counties have the authority to hold an advisory referendum to ascertain the public’s view on issues concerning the proposed merger of hospital systems within the county. Even if the matters are limited over which council has jurisdiction to hold an advisory referendum, health care is a valid county and public purpose for which an advisory referendum may be held. Unpublished Op. Atty. Gen., dated October 11, 1996.

SECTION 4-9-33: County Police Department Creation

EDITOR'S NOTE: Section 4-9-33 was adopted by the General Assembly to address questions that arose after § 4-9-30(5) was rewritten. This code section makes it clear that no law enforcement function involving the exercise of the custodial arrest power may be performed by anyone other than

the sheriff, absent a referendum. The language of the section also clarifies the authority of county council over the county budget with regard to the sheriff's department.

§ 4-9-33. Referendum required to approve creation of county police department.

A referendum must be held to approve the creation of a county police department prior to the implementation of an ordinance adopted by a county council which would duplicate or replace the law enforcement functions of a sheriff. As used in this section, the term law enforcement means those activities and duties which require the exercise of custodial arrest authority by a sheriff or his duly appointed and sworn deputy or the performance of duties conferred by state law upon a sheriff and those activities incidental to the performance of law enforcement duties.

Nothing in this section shall be construed as a limitation on the authority of a county council to provide litter control and animal control, to appoint and commission code enforcement officers as provided for in Section 4-9-145, to provide other services not directly related to law enforcement, to exercise the powers conferred by general law upon counties to protect the public health, safety, and general welfare of the community, or to adopt capital and operating budgets for the operation of the county as provided for in Section 4-9-140.

A county council may provide for E-911 services as provided for in Chapter 47 of Title 23; provided, however, that access to criminal records databases and other similar restricted databases relating to law enforcement functions must remain under the supervision of the sheriff or his designee unless law enforcement functions are transferred to a county police department pursuant to a referendum provided for in this section.

HISTORY: 1993 Act No. 12.

Cross References --

Off duty private jobs of law enforcement officers, see Title 23, Chapter 24.
Police districts in unincorporated communities, see Title 23, Chapter 27.
Sheriff's duties concerning the county jail and devolution of those duties to the county, see §§ 24-5-10 and 24-5-12.

CASE NOTE

*No county-wide referendum was required by § 4-9-30 prior to the passage of a county ordinance abolishing the county police commission and devolving its function upon the county council and/or the county administrator, because the county ordinance did not in any manner affect the duties or functions of the sheriff's department. Graham v. Creel, 289 S.C. 165, 345 S.E.2d 717 (1986).

ATTORNEY GENERAL'S OPINIONS

State law requires certain criminal records be maintained by the sheriff and separate from other county records. A sheriff's department would be authorized to maintain a fully independent information technology network, separate from that of the county, to maintain those criminal records. Such supervisory requirement by a sheriff is in keeping with other provisions that restrict public accessibility. However, county council could deny funds to the sheriff's office for consulting fees related to development of the network. Op. Atty. Gen., date April 20, 2006.

*It is extremely doubtful that a county council could take action to withdraw the appropriation for a particular deputy sheriff's position. Therefore it is doubtful that a county council could impose a hiring freeze upon the sheriff's department. 1991 Op. Atty. Gen., No. 91-48.

*The appointment of a code enforcement officer, pursuant to § 4-9-145, to provide supplemental law enforcement for a municipality could constitute a conflict with § 4-9-30(5) inasmuch as it could duplicate duties and functions already performed by the sheriff. Also, such might be considered a restructuring or reorganization of the sheriff's department; therefore, such an appointment would not be authorized absent compliance with the referendum requirements of § 4-9-30(5). 1991 Op. Atty. Gen., No. 91-56.

*Any action by county council through its budgetary process cannot interfere with the sheriff's role as chief law enforcement officer in his county. 1989 Op. Atty. Gen., No. 89-55.

*Only a court could make an absolute conclusion as to whether action by a county council in not funding certain positions within the sheriff's department would constitute a "reorganization" or "restructuring" of the sheriff's department and thus require a referendum. 1987 Op. Atty. Gen., No. 87-72.

*Hiring and discharge of a deputy sheriff are matters solely within prerogative of the sheriff, and it is extremely doubtful whether action could be taken by county council to withdraw appropriation for a particular deputy sheriff's position so as to result in termination of that particular deputy. 1985 Op. Atty. Gen., No. 85-82.

*NOTE: Several of the case notes and opinions above relate to the language formerly contained in § 4-9-30(5) concerning restructuring or reorganization of the sheriff's department and the budget of the sheriff's department. The opinions are reproduced here as a convenience and are marked with an asterisk. Although the law they discuss is no longer in effect, they are still referred to in discussions concerning the sheriff's department.

SECTION 4-9-35: County Public Library Systems

EDITOR'S NOTE: §§ 4-9-35 through 4-9-39 were initially passed as § 2 to Act No. 564 in 1978. Section 1 of that same act outlined the legislative findings leading to this Act:

The General Assembly finds that county public libraries make a substantial contribution to the education and recreation of the residents of the state and merit the continued interest and support of state and local government. By this act the General Assembly seeks to clarify the status of county public libraries under the "home rule legislation," to define the relationship between county government and county library systems, and to insure the continued operation and support of such libraries on a uniform basis.

§ 4-9-35. County public library system; boards of trustees.

(A) Each county council shall prior to July 1, 1979, by ordinance establish within the county a county public library system, which ordinance shall be consistent with the provisions of this section; provided, however, notwithstanding any other provisions of this chapter, the governing body of any county may by ordinance provide for the composition, function, duties, responsibilities, and operation of the county library system. County library systems created by such ordinances shall be deemed a continuing function of county government and shall not be subject to the provisions of § 4-9-50 except as state funds are specifically appropriated under other provisions of law.

(B) Each county public library systems shall be controlled and managed by a board of trustees consisting of not fewer than seven nor more than eleven members appointed by the county council (council) for terms of four years and until successors are appointed and qualify except that of those members initially appointed one-half of such appointees less one shall be appointed for terms of two years only. Previous service on county library board prior to the enactment of the county ordinance establishing the board shall not limit service on the board. Vacancies shall be filled in the manner of the original appointment for the unexpired term. To the extent feasible, members shall be appointed from all geographical areas of the county.

(C) The board shall annually elect a chairman, vice-chairman, secretary, treasurer and such other officers as it deems necessary. The board shall meet not less than four times each year and at other times as called by the chairman or upon the written request by a majority of the members.

HISTORY: 1978 Act No. 564, § 2.

Cross reference --

County, township, school districts and municipal libraries, see § 60-5-10, et seq.

ATTORNEY GENERAL'S OPINIONS

In regard to the employment and discharge of the chief librarian, §4-9-35 provides that the board of trustees and not the county administrator is the authorized entity to exercise the policies, outlined in §4-9-36, of the library system, which are not inconsistent with the general policies established by the governing body of the county. Op. Atty. Gen., dated July 11, 2008.

Membership on a county library board of trustees established pursuant to S.C. Code Ann. § 4-9-35 would most probably constitute an office for dual office holding purposes. It would be necessary to examine the county ordinance with respect to the board in making a determination. Op. Atty. Gen., dated May 13, 2002.

The legislature, within Section 4-9-35 authorizing the establishment of county libraries, meant for the establishment of "county public library systems" as opposed to any specific branch of the county library. Therefore, when the legislature used the term "library" in its Proviso 72.95 requiring internet filters, it meant "the library system" of each county not individual county library branches. Op. Atty. Gen., dated August 27, 2001.

SECTION 4-9-36: Duties of Library Boards of Trustees

EDITOR'S NOTE: See EDITOR'S NOTE for § 4-9-35.

§ 4-9-36. Duties of boards of trustees.

The board as provided for in § 4-9-35 shall be authorized to exercise powers as to the policies of the county library which shall not be inconsistent with the general policies established by the governing body of the county, and pursuant to that authority shall be empowered to:

(1) Employ a chief librarian whose qualifications and credentials shall meet the certification requirements of the State Library Board, and who shall be responsible to the county library board for the administration of the program and the selection of library staff members required to carry out the functions of the library system.

(2) Purchase, lease, hold and dispose of real and personal property in the name of the county for the exclusive use of the county public library system. Provided, however, any such conveyance, lease or purchase of real property shall be by

the county governing body in accordance with the provisions of Sections 4-9-10 et seq. and Sections 5-1-10, et seq., as amended.

(3) Acquire books and other library materials and provided for use thereof throughout the county.

(4) Accept donations of real property, services, books and other items suitable for use in the library system.

(5) Designate or mark equipment, rooms and buildings, and other library facilities to commemorate and identify gifts and donations made to the library system.

(6) Cooperate or enter into contracts or agreements with any public or private agency which results in improved services or the receipt of financial aid in carrying out the functions of the library system. Provided, however, such contracts and agreements shall be subject to approval by the governing body of the county.

(7) Enter into contracts or agreements with other counties to operate regional or joint libraries and related facilities. Provided, however, such contracts and agreements shall be subject to approval by the governing body of the county.

(8) Receive and expend grants, appropriations, gifts and donations from any private or public source for the operation, expansion or improvement of the library system.

(9) Take any actions deemed necessary and proper by the board to establish, equip, operate and maintain an effective library system within limits of approved appropriations of county council.

HISTORY: 1978 Act No. 564, § 2.

Cross references --

Power of county government to purchase and sell property, see §§ 4-9-30 and 4-9-1030.

ATTORNEY GENERAL'S OPINION

Section 4-9-36 does not provide library boards the implied authority to unilaterally levy property tax millage to fund operations of a county library system. County council is the party responsible for funding the operations of the library system and that authority cannot be delegated to the library board. Section 4-9-37 explains that the county library board is responsible for submitting a budget annually to county council, therefore county council must make any decisions regarding property tax increases for the purposes of funding the county library system. Op. Atty. Gen., dated May 6, 2011.

While all employees of a county library are subject to the provisions of §4-9-30(7), the legislature intended for §4-9-36 to provide more specific authority regarding personnel issues and the chief librarian. The hiring, termination and disciplinary procedure for the chief librarian is granted, pursuant to §4-9-36, to the library system's board of trustees rather than the county administration. Where one statute addresses an issue in general terms and another statute addresses the same issue in more specific terms, the more specific statute will be considered an exception to, or qualifier of, the general statute. Op. Atty. Gen., dated July 11, 2008.

SECTION 4-9-37: Additional Duties of Library Boards

EDITOR'S NOTE: See EDITOR'S NOTE for § 4-9-35.

§ 4-9-37. Additional duties of boards of trustees.

In addition to the powers and duties prescribed in § 4-9-36 the board shall:

(a) Provide and make available to the residents of the county books and library materials and in the fulfillment of this function shall establish a headquarters library and may establish branches and subdivisions thereof in appropriate geographical areas of the county within the limits of available funds. The board may operate one or more bookmobiles over routes determined by the board.

(b) Adopt regulations necessary to insure effective operation, maintenance and security of the property of the library system. Provided, however, such regulations shall not be in conflict with policy or regulations established by the county governing body.

(c) Annually at a time designated by the county council submit to the council a budget for the ensuing fiscal year adequate to fund the operation and programs of the library system. Such budget shall list all funds which the board anticipates will be available for the operation of the library system. All funds appropriated, earned, granted or donated to the library system, including funds appropriated by the county council, shall be deposited and expended as provided for by the ordinance in each county establishing the library system. All funds appropriated, earned, granted or donated to the library system or any of its parts shall be used exclusively for library purposes. All financial procedures relating to the library system including audits shall conform to the procedure established by the county council.

(d) Annually file a detailed report of its operations and expenditures for the previous fiscal year with the county council.

HISTORY: 1978 Act No. 564, § 2.

ATTORNEY GENERAL'S OPINION

Section 4-9-37(b) provides that the board of trustees of county libraries shall adopt regulations necessary to ensure effective operation, maintenance, and security of the property of the library system. Consistent with that section the county board could regulate conduct in its county library. Counties could also consider adoption of ordinances regarding conduct in their libraries pursuant to §4-9-25, which authorizes exercise of power in relation to health and order in the county. Op. Atty. Gen., dated February 17, 2009.

SECTION 4-9-38: Status of Library Donations for Tax Purposes

EDITOR'S NOTE: See EDITOR'S NOTE for § 4-9-35.

§ 4-9-38. Status of donations for tax purposes; applicability of state laws.

All county public library systems established pursuant to § 4-9-35 are deemed to be educational agencies and gifts and donations of funds or property to such systems shall be deductible by the donors for tax purposes as provided by law for gifts and donations for tax purposes.

All state laws and regulations relating to county public library systems shall apply to library systems created pursuant to § 4-9-35.
All employees of a county public library system shall be subject to the provisions of item (7) of § 4-9-30.

HISTORY: 1978 Act No. 564, § 2.

SECTION 4-9-39: Funding of Library Systems

EDITOR'S NOTE: See EDITOR'S NOTE for § 4-9-35.

§ 4-9-39. Funding of systems; transfer of assets of former libraries.

County public library systems shall be funded by annual appropriations by the county council including millage, if any, levied specifically for the county public library system plus aid provided by the state and federal governments and other sources. If any county council levies a tax specifically for the support of a county

public library system, such tax shall apply to all persons and corporations subject to school taxes.

All assets and property, both real and personal, owned by any county library prior to the creation of a library system under Section 4-9-35 shall be transferred to the county by the persons or entities owning title thereto provided, however, any decision to sell or otherwise transfer the property for use other than for library purposes must be made by two-thirds majority of the county governing body.

HISTORY: 1978 Act No. 564, § 2 and 1994 Act No. 480.

Cross references --

County, township, school districts and municipal libraries, see § 60-5-10, et seq.
Power of county government to purchase and sell property, see §§ 4-9-30 and 4-9-1030.

ATTORNEY GENERAL'S OPINION

Under settled rules of construction that an interpretation in favor of the constitutionality of the statute is required, it is thus the opinion of this office that § 4-9-39 does not conflict with Article 10, § 3(g). The opinion is based upon the interpretation that the library tax does not apply to that property exempt by Article 10, § 3(g) of the South Carolina Constitution. An interpretation that would render such property subject to the library tax necessarily results in the statute's being unconstitutional. 1981 Op. Atty. Gen., No. 81-63.

SECTION 4-9-40: Providing Services Within Municipalities

EDITOR'S NOTE: This section was part of the original Home Rule Act and followed the specific powers grant in § 4-9-30. Section 4-9-30 provides counties with a number of powers previously given only to municipalities. This section was added to authorize counties to provide services in municipalities where the municipalities were not providing them and to preclude counties from providing services where municipalities were already providing them.

§ 4-9-40. Power of county to contract for services within municipalities.

Any county may perform any of its functions, furnish any of its services within the corporate limits of any municipality, situated within the county, by contract with any individual, corporation or municipal governing body, subject always to the general law and the Constitution of this State regarding such matters. Provided, however, that where such service is being provided by the municipality or has been budgeted or funds have been applied for that such

service may not be rendered without the permission of the municipal governing body.

HISTORY: 1962 Code § 14-3703.1; 1975 (59) 692.

Cross references --

Constitutional authority for joint administration of functions and exercise of power, see S.C. Const., art. 8, § 13.

Agreements for investigations involving multiple jurisdictions or the temporary transfer of officers, see §§ 23-1-219 and 23-1-215.

CASE NOTE

If a municipality has imposed the maximum cumulative tax permitted by the Local Accommodations Tax Act (§6-1-520(A) et seq.) and the Local Hospitality Tax Act (§6-1-720(A) et seq.) in an incorporated area, the acts effectively preclude a county from imposing any other tax within that incorporated area. City of Hardeeville v. Jasper County, 340 S.C. 39, 530 S.E.2d 374 (2000).

ATTORNEY GENERAL'S OPINIONS

A sheriff, as chief law enforcement officer of a county, is statutorily obligated to patrol his county, which presumably includes municipalities within that county. However, a sheriff, as a county official, is not responsible for providing a specific level of services within municipalities or for enforcing municipal ordinances. A municipality may contract with the sheriff of the county to provide specific services within municipalities, but that is best accomplished through intergovernmental agreement. Op. Atty. Gen., dated April 20, 2011.

While a county and county officials are not obligated to perform services within the corporate limits of a city, the General Assembly has provided by statute for municipal residents to contract for county services. A sheriff is not obligated to provide specific services within a municipality, however, a sheriff may contract with a municipality to provide law enforcement services. Op. Atty. Gen., dated August 25, 2006.

Counties are not obligated to perform services within the corporate limits of a city, but may furnish law enforcement and fire dispatch services within the municipal limits pursuant to a contract with an individual, corporation or the municipal government, provided those services are not being provided by the municipality. If the municipality consents, however, services already provided or budgeted for by the municipality may be provided by the county. Unpublished Op. Atty. Gen., dated February 11, 1997.

Pursuant to §4-9-40, a county could not enforce a county ordinance limiting protests or picketing on county property if the property is located within corporate limits of a municipality. County council has no authority to enact ordinances that are enforceable within the confines of municipalities. However, by agreement, the county and the municipality could agree to enforce ordinances within the municipality. Op. Atty. Gen., dated May 20, 1996.

While a sheriff is statutorily obligated to patrol his county, he is not generally considered to provide specific services within a municipality. A sheriff could offer contract law enforcement services to a municipality. Unpublished Op. Atty. Gen., dated Nov. 6, 1992.

A county may incur bonded indebtedness to assist in the construction of municipal water lines if the county council determines that public and corporate purposes are being served. A county's levying of taxes merely for the benefit of the municipality would violate §§ 5 and 7 of Article 10 of the S.C. Constitution. 1991 Op. Atty. Gen., No. 91-49.

The county council has no authority to enact ordinances that are enforceable within the confines of municipalities. Thus, a county ordinance would be of no effect for any recreation commission facilities located within the municipalities of the county. Op. Atty. Gen., dated May 21, 1987.

A county or municipal law enforcement agency may, upon request, provide special police services in addition to those regularly provided to private business concerns, charge a fee, and utilize regular police equipment and personnel desiring to work overtime. 1978 Op. Atty. Gen., No. 78-39.

The Home Rule Act is not retroactive so as to affect contracts entered into prior to the effective date of the legislation. 1975-76 Op. Atty. Gen., No. 4470.

SECTION 4-9-41: Joint Administration of Functions and its Effect

EDITOR'S NOTE: This section was adopted as part of the legislation providing for consolidation of political subdivisions. However, this section refers to § 13 of Article 8 in the S.C. Constitution, which grants political subdivisions the right to enter into intergovernmental agreements. An intergovernmental agreement is a method of achieving consolidation of a particular governmental function with the agreeing governments retaining their political integrity, as opposed to consolidation of the political entities as a whole. Consolidation of the political subdivisions themselves is a power granted in § 12 of Article 8 of the S.C. Constitution. This section merely clarifies the fact that political subdivisions do have the right to consolidate governmental functions, without consolidating the political subdivisions themselves, and effect a "functional consolidation" as opposed to a complete consolidation of political subdivisions.

§ 4-9-41. Joint Administration of Functions by county, incorporated municipality, special purpose district, or other political subdivision.

(A) Any county, incorporated municipality, special purpose district, or other political subdivision may provide for the joint administration of any function and exercise of powers as authorized by Section 13 of Article VIII of the South Carolina Constitution.

(B) The provisions of this section may not be construed in any manner to result in diminution or alteration of the political integrity of any of the participant subdivisions which agree to and become a part of the functional consolidation, nor may any constitutional office be abolished by it.

HISTORY: 1992 Act No. 319, § 2.

Cross references --

Constitutional authority for joint administration of functions and exercise of power, see S.C. Const., art. 8, § 13.

Constitutional authority for consolidation of political subdivisions, see S.C. Const., art. 8, § 12, and Chapter 8, Title 4.

Agreements for investigations involving multiple jurisdictions or the temporary transfer of officers, see §§ 23-1-219 and 23-1-215.

Authority for local law enforcement to contract for assistance and support service from other law enforcement authorities, see Chapter 20, Title 23.

SECTION 4-9-45: Police Jurisdiction of Coastal Counties

EDITOR'S NOTE: In the absence of an expression to the contrary, a political subdivision of the state has police jurisdiction to the high water mark of the sea. This section clearly expresses the intent of the legislature to extend the police jurisdiction of those counties that border on the sea to the low water mark.

§ 4-9-45. Police jurisdiction of coastal counties.

For the purpose of maintaining proper policing, to provide proper sanitation and to abate nuisances, the police jurisdiction and authority of any county bordering on the high tide line of the Atlantic Ocean is extended to include all that area lying between the high tide line and the low tide line not within the corporate limits of any municipality. Such area shall be subject to all the ordinances and regulations that may be applicable to the area lying within the boundary limits of the county, and the magistrates' courts shall have

jurisdiction to punish individuals violating the provisions of the county ordinances where such misdemeanor occurred and in the area defined in this section.

HISTORY: 1980 Act No. 300, § 3.

Cross references –

Counties are authorized to grant franchises and contracts for the use of public beaches § 4-9-30(11).

Research and Practice References --

56 Am. Jur. 2d Municipal Corporations, Counties and Other Political Subdivisions §§ 193-195.
20 C.J.S. Counties § 49.

SECTION 4-9-50: Source of Funds for State Mandates Must Be Identified

EDITOR'S NOTE: This section would require the legislature to identify funding sources prior to placing additional mandates on the counties.

§ 4-9-50. Source of funds for use of county personnel, facilities, or equipment to implement general law.

Whenever the General Assembly shall provide by general law for the use of county personnel, facilities or equipment to implement such general law or rules and regulations promulgated pursuant thereto, the State agency or department responsible for administering such general law shall provide sufficient funds for county implementation from appropriations to that agency of department; provided, that this section shall not apply to construction of or improvement to county capital improvements or other permanent facilities required by the provisions of the general law or regulations promulgated pursuant thereto.

HISTORY: 1962 Code § 14-3703.2; 1975 (59) 692.

ATTORNEY GENERAL'S OPINIONS

Section 4-9-50 applies to general laws that provide for the use of county personnel, facilities, or equipment for implementation. However, if a law were adopted prior to the appropriations act and it contained no appropriation for the law in question, the provisions of § 4-9-50 would be deemed superseded by the provisions of the appropriations act. Unpublished Op. Atty. Gen., dated March 8, 1990.

The failure of the General Assembly to appropriate funds for a state mandated use of county personnel has the effect of suspending the operation of § 4-9-50. Unpublished Op. Atty. Gen., dated October 21, 1976.

SECTION 4-9-55: Unfunded State Mandates

EDITOR'S NOTE: The adoption of this statute was a significant first step toward controlling unfunded state mandates. This statute requires a two-thirds vote of each chamber of the General Assembly to pass an unfunded mandate, although there are exceptions to the rule.

A 1997 amendment to § 4-9-55 deleted the exemptions for appropriations bills from the two-thirds vote requirement for the General Assembly to impose an unfunded mandate and added subsection (E) to specifically address provisions of, or amendments to, appropriations bills to clarify that the two-thirds vote requirement applies to the amendment or provision, not the appropriations bill as a whole.

Interpretation of this statute is largely through parliamentary rulings of the presiding officers in the South Carolina Senate and House of Representatives

For use in applying subsection (C)(7), the population of South Carolina, as determined by the 2000 U.S. Census, is 4,012,012.

§ 4-9-55. Enactment of general laws affecting counties' expenditures and revenue raising; conditions; exceptions.

> **(A) A county may not be bound by any general law requiring it to spend funds or to take an action requiring the expenditure of funds unless the General Assembly has determined that the law fulfills a state interest and the law requiring the expenditure is approved by two-thirds of the members voting in each house of the General Assembly provided a simple majority of the members voting in each house is required if one of the following applies:**
>
> > **(1) funds have been appropriated that have been estimated by the Division of Budget and Analyses at the time of enactment to be sufficient to fund the expenditures;**
> >
> > **(2) the General Assembly authorizes or has authorized a county to enact a funding source not available for the county on July 1, 1993, that can be used to generate the amount of funds estimated to be sufficient to fund the expenditure by a simple majority vote of the governing body of the county;**

(3) the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments;

(4) the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement.

(B) Except upon approval of each house of the General Assembly by two-thirds of the members voting in each house, the General Assembly may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that counties have to raise revenues in the aggregate, as the authority exists on July 1, 1993.

(C) The provisions of this section do not apply to:

(1) laws enacted to require funding of pension benefits existing on the effective date of this section;

(2) laws relating to the Judicial Department;

(3) criminal laws;

(4) election laws;

(5) the Department of Education;

(6) laws re-authorizing but not expanding then-existing statutory authority;

(7) laws having a fiscal impact of less than ten cents per capita on a statewide basis; laws creating, modifying, or repealing noncriminal infractions.

(D) The duties, requirements, and obligations imposed by general laws in effect on July 1, 1993, are not suspended by the provisions of this section.

(E) A provision of, or amendment to, an appropriation bill that contains a permanent or temporary provision of law must be adopted by a separate vote of the General Assembly in the manner provided in subsections (A) through (D) of this section. Provided, however, that once a provision or amendment to an appropriation bill is adopted, the vote to adopt or reject an appropriation bill on second reading, third reading, or adoption of the conference committee or free conference committee report is not subject to the provisions of subsections (A) through (D) of this section.

HISTORY: 1993 Act No. 157, § 1; 1997 Act No. 138, § 1.

Cross References --

Similar provision for municipalities, see § 5-7-310.

SECTION 4-9-60: Election or Appointment of Auditor and Treasurer

EDITOR'S NOTE: This section sets out the requirement that auditors and treasurers must be elected under the council, council-supervisor, and council-administrator forms of government. See also section 4-9-860 for procedures under the council-manager form of government.

§ 4-9-60. Election or appointment, and terms, of county treasurer and auditor under certain forms of government; continuation of officials in office.

> **Under the council, council-supervisor and council-administrator forms of government provided for in this chapter the county treasurer and the county auditor shall be elected. Officials serving unexpired terms when a form of government provided for in this chapter is adopted by a particular county shall continue to serve until successors are elected and qualify. Under the council-manager form the county treasurer and county auditor shall serve out their unexpired terms but shall thereafter be elected or appointed as council shall by ordinance prescribe.**

HISTORY: 1962 Code § 14-3703.3; 1975 (59) 692.

Cross references --

> *Appointment by the governor of the auditor and the treasurer in counties not having either a council, council-supervisor or council-administrator form of government, see §§ 12-39-10 and 12-45-10 respectively.*

ATTORNEY GENERAL'S OPINIONS

If a treasurer and auditor are elected in the same election as a successful referendum for a change of form of government from county-administrator to county-manager, the treasurer- and auditor-elect would not be able to assume office and serve out the term if the county adopts an ordinance, before the treasurer and auditor take office, providing that treasurers and auditors are appointed. The second sentence of the statute protects treasurers and auditors in office when the form of government is changed, not those who have been elected. Op. Atty. Gen., dated May 25, 2012.

In the event of a change from a council-administrator to a council-manager form of government, section 4-9-60 does not protect a treasurer-elect or auditor-elect if an ordinance providing for these offices to be filled by appointment is completed before he or she assumes office. Only a county treasurer or county auditor already in office at the time of such an ordinance would be allowed to serve for the remainder of their unexpired terms. Op. Atty. Gen., dated May 25, 2012.

As set forth by §§ 12-45-20 and 12-39-10, a county treasurer or county auditor holds office until his

successor is appointed or elected and qualified. In the absence of a specific statutory or constitutional provision, public officers hold over de facto until their successors are appointed or elected and qualified. Vacancy nevertheless exists in the sense that successors may be appointed or elected and qualified; but meanwhile, the holdovers are entitled to retain the offices. Op. Atty. Gen., dated June 15, 2005.

Under the council-manager form of government, the county manager is responsible for the employment and discharge of an appointed treasurer in the same manner as other department heads. 1991 Op. Atty. Gen., No. 91-31.

A vacancy in the office of auditor is filled by appointment by the governor for the remainder of the unexpired term and no Senate confirmation is necessary. 1978 Op. Atty. Gen., No. 78-53.

Cross References:

Appointment of deputy in a vacancy in the office of county auditor; §12-39-40
Appointment of deputy in a vacancy in the office of county treasurer; §12-45-35

SECTION 4-9-70: Public School Education and County Council

EDITOR'S NOTE: This section makes clear that the Home Rule Act does not give county councils additional powers over local school boards, including the power to determine school property tax millage, other than those powers county councils had prior to the Act.

§ 4-9-70. Powers of county council with regard to public school education; establishing school tax millage.

> **The provisions of this chapter shall not be construed to devolve any additional powers upon county councils with regard to public school education, and all school districts, boards of trustees and county boards of education shall continue to perform their statutory functions in matters related thereto as prescribed in the general law of the State; provided, however, that except as otherwise provided for in this section the county council shall determine by ordinance the method of establishing the school tax millage except in those cases where boards of trustees of the districts or the county board of education established such millage at the time one of the alternate forms of government provided for in this chapter becomes effective. In counties containing more than one school district, where all such districts are located wholly within the boundaries of the county, council may by ordinance establish county-wide school tax millage. Provided, further that in any county where the General Assembly retained the authority to establish or limit the millage levied by school**

districts or levy a tax for educational purposes, on January 1, 1974, such authority shall continue in the General Assembly until such time as such authority may be transferred to the school district or the county governing body by act of the General Assembly. Provided, further, in any county where on January 1, 1975 the school district tax millage and budget was established in meetings or referendums of the qualified electors of the district at which meetings or referendums such electors changed, altered, rejected, or amended by voice vote or ballot the school budget and necessary tax millage to implement such budget as proposed by the district board of trustees, such procedures to establish the school tax millage shall continue unaffected or modified by the provisions of this section or any other provision of law in conflict with this proviso.

HISTORY: 1962 Code § 14-3704; 1975 (59) 692.

Cross references --

County boards of education, see §§ 59-15-10 to 59-15-40
Education, generally, see Title 59.

CASE NOTES

Authority of the county board of education to review and approve school district budget and to set tax millage rates for each school district did not violate provision of state constitution guaranteeing uniform taxation within a jurisdiction. Section 4-9-70 states that the county council shall determine by ordinance the method of establishing the school tax millage except in those cases where boards of trustees of the districts or the county board of education established such millage at the time this chapter becomes effective. By enacting §4-9-70, the General Assembly attempted to ensure that the taxing power for all school districts would be properly vested in some authority. Burriss v. Anderson Cty. Bd. of Ed., 369 S.C. 443, 633 S.E.2d 482 (2007).

Neither the county council nor auditor may deviate from the projected EIA minimum local effort estimated by the S.C. Department of Education when establishing the school district millage rate. Otherwise, the county would have the authority to violate the mandate contained in § 59-21-1030. Richland Cty. School Dist. One v. Richland Cty. Council, 310 S.C. 106, 425 S.E.2d 747 (1992); reheard 425 S.E.2d 750 (1992).

Pursuant to § 4-9-67, fee-in-lieu of tax payments are to be treated in the same manner as property taxes and are to be distributed among “millage entities or purposes” in proportion to their respective property tax millage. The various entities' respective shares of the fees-in-lieu of taxes can only be determined after the respective millage rates for the entities entitled to receive a portion of the fees-in-lieu of taxes are set. Richland Cty. School Dist. One v. Richland Cty. Council, 310 S.C. 106, 425 S.E.2d 747 (1992); reheard 425 S.E.2d 750 (1992).

An exception under § 4-9-70, which provides that "county council shall determine by ordinance the method of establishing the school tax millage except in those cases where boards of trustees of the districts or the county board of education established such millage at the time one of the alternate forms of government provided for in this chapter becomes effective," would be invalid when applied to an appointed authority since it was inconceivable that the legislature would not provide for the school tax levy merely because it could not constitutionally vest control of that power in appointed boards of education and, therefore, the legislative intent would be preserved by allowing a county council to prescribe the method of establishing school tax millage. Stone v. Traynham, 278 S.C. 407, 297 S.E.2d 420 (1982).

A statute that changed the method of electing boards of trustees of school boards for a particular county was not unconstitutional under provision of county "home rule" amendment with respect to the organization of a county government and prohibiting laws for a specific county, since public education is not the duty of counties but of the General Assembly, governed by the constitution relating to "Public Education." Moye v. Caughman, 265 S.C. 140, 217 S.E.2d 36 (1975).

ATTORNEY GENERAL'S OPINIONS

A court would probably conclude that a county council does possess certain limited investigative powers pursuant to its authority to levy taxes by setting the millage rate for a school district. 1986 Op. Atty. Gen., No. 86-7.

County council, pursuant to § 4-9-70, may consider surplus or unappropriated school funds from prior fiscal years when establishing a school tax millage for a school district. 1978 Op. Atty. Gen., No. 78-52.

A county council may not lend county funds to a school district within the county unless the school district is coextensive with the county. 1976-77 Op. Atty. Gen., No. 77-226.

The General Assembly will be the body authorized to levy a tax for educational purposes and to establish or limit the millage levied by school districts in the absence of an act transferring that power to the county council or to the individual school districts. 1974-75 Op. Atty. Gen., No. 4073.

SECTION 4-9-80: Special Purpose Districts and County Council

EDITOR'S NOTE: Prior to the passage of the Home Rule Act, many of the services now provided by counties, such as fire protection or sewage and garbage service, were not available through county government because of the County Purpose Doctrine. In order to provide these services for

residents living in unincorporated areas of rapidly urbanizing counties, special purpose or public service districts were created. Special purpose districts were individual subdivisions of state government, created on an ad hoc basis to deal with individual service problems.

Under Knight v. Salisbury, 262 S.C. 565, 206 S.E.2d 875 (1974), it is no longer constitutional for the General Assembly to create additional single county special purpose districts. The following four sections set forth the procedures for dealing with the SPDs already in place prior to the Act. Like § 4-9-70, which deals with school districts, § 4-9-80 makes it clear that county councils did not gain additional powers over SPDs from the Home Rule Act.

§ 4-9-80. Powers of county councils with regard to public service and special purpose districts, water and sewer authorities, and other political subdivisions; procedures upon dissolution of such districts.

> **The provisions of this chapter shall not be construed to devolve any additional powers upon county council with regard to public service districts, special purpose districts, water and sewer authorities, or other political subdivisions by whatever name designated, (which are in existence on the date one of the forms of government provided for in this chapter becomes effective in a particular county) and such political subdivisions shall continue to perform their statutory functions prescribed in laws creating such districts or authorities except as they may be modified by act of the General Assembly, and any such act which dissolves a district or absorbs its function entirely within the county government shall provide that such act shall be effective only upon approval of such abolition or absorption by favorable referendum vote of a majority of the qualified electors of the district voting in such referendum. Upon the dissolution of any district within a county and the assumption of its function by the county government, the county shall take title to the property of the district and assume all of its debts and obligations which shall be retired by charges or assessment of taxes in those areas of the county receiving benefits from the facilities of the district; provided, however, notwithstanding any other provision of law, when any county council under existing law is authorized to appoint members to the governing body of a public or special service district or a water resources commission within the county and such governing body by resolution directed to the council requests a change in the size or manner in which members of such governing body are selected, the council may by ordinance effect such changes and the council action shall have the full force and effect of law from the effective date of the ordinance.**

HISTORY: 1962 Code § 14-3705; 1975 (59) 692; 1979 Act No. 135 § 2.

Cross References --

Dissolution of recreational special purpose districts, see § 6-11-2028.
Public service and special purpose districts and other political subdivisions, generally, see Title 6.
Procedure to abolish non-functioning special purpose districts, see § 4-11-290.
Procedure to dissolve a rural water district created pursuant to § 6-13-10 et seq., see § 6-13-120.
Procedure to dissolve special purpose districts, see § 6-11-2010.

CASE NOTES

Residents of a water and sewer special purpose district (SPD) challenged the taxing authority of their district and Beaufort County for collecting taxes prior to Weaver v. Recreation District, 328 S.C. 83, 492 S.E. 2d 79 (1997). Weaver prospectively held that the appointed commission of an SPD could not levy a property tax against its residents as it violated the state constitution provision forbidding taxation by unelected officials. The court examined the issue of a federal guarantee of no taxation without representation and determined that the taxing power delegated to the district did not violate U.S. Const. Article IV § 4 (the Republican Guarantee Clause of the federal constitution) as the clause only guarantees a republican form of government and offers no protection against taxation without representation. Campbell v. Hilton Head No. 1 Public Service District, 354 S.C. 190, 580 S.E. 2d 137 (2003).

The Home Rule Act cannot be construed to give county government more authority over a pre-Home Rule public service district than it was given in the original act creating the special purpose district. Thomas v. Cooper River Park, 322 S.C. 32, 471 S.E.2d 170 (1996).

Special purpose district taxes are not necessarily county taxes, since, under § 4-9-80, the existence of special purpose districts is protected, even under home rule, until they are dissolved by the General Assembly after a favorable referendum, and counties cannot abolish them, so that the existence of home rule would not require the appellate court to construe county taxes to include taxes of special purpose districts. Michelin Tire Corp. v. Spartanburg County Treasurer, 281 S.C. 31, 314 S.E.2d 8 (1984). *Ed. Note – Since this opinion was issued, the General Assembly has adopted sections 4-11-290, 6-11-2010, and 6-11-2028, which provide mechanisms for dissolving special purpose districts.*

The General Assembly is not permitted under § 4-9-80 to enact special legislation regarding SPDs. Spartanburg Sanitary Sewer Dist. v. Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984).

Under S.C. Const., art. 8, § 7 and §§ 44-55-1410 and 4-9-80, counties lack the power to abolish special purpose districts existing prior to home rule, until the legislature passes a general law affecting the existence of those districts. Berry v. Weeks, 279 S.C. 543, 309 S.E.2d 744 (1983).

ATTORNEY GENERAL'S OPINIONS

In light of § 4-9-80, a county fire marshal appointed by the county to supervise and implement a county fire protection plan adopted pursuant to § 4-19-10 et seq. would have no effect upon the internal operations of a special purpose district providing fire service. However, any agreement the special purpose district entered into with the countywide fire district may have some impact upon the special purpose district's internal operations. Unpublished Op. Atty. Gen., dated August 26, 1994.

It might be possible to use the § 4-9-80 procedure to dissolve a rural community water district. Unpublished Op. Atty. Gen., dated May 22, 1992. *Ed. Note – Subsequent to this opinion, the General Assembly adopted § 6-13-120 and § 6-11-2010, which provide dissolution processes.*

There appears to be no provision in the Home Rule Act that would affect the taxing authority of watershed conservation districts created either before or after the advent of home rule. Taxation without representation may be found to exist if legislation which, if adopted, would mandate appointment rather than election of watershed conservation district directors. 1987 Op. Atty. Gen., No. 87-48.

Upon dissolution of a special purpose district, which may be accomplished pursuant to § 4-9-80, title to property of the district would pass to the county; assuming that constitutional provisions are followed, assets would be utilized for public purposes and would not inure to the benefit of private persons, associations, corporations, or the like. 1985 Op. Atty. Gen., No. 85-49.

A special purpose district is a separate political subdivision and neither a city nor county may, by contract, ordinance, or agreement, alter appointment procedures for members of its governing body. 1985 Op. Atty. Gen., No. 85-36.

The term “special purpose district” contained in Act No. 488 of 1984 is broad and open-ended. There are many factors to be considered in determining whether an entity is a special purpose district under terms of Act No. 488; actual determination must be made on individual basis. 1984 Op. Atty. Gen., No. 84-132.

Any act that dissolves a special purpose district must provide for a referendum approving the abolition by a majority of the electors. 1976-77 Op. Atty. Gen., No. 77-62. *Ed. Note – See section 4-11-290 for the procedure to abolish a non-functioning special purpose district and § 6-11-2010 for a general dissolution mechanism.*

SECTION 4-9-81: Increasing the Size of an SPD Governing Body

EDITOR'S NOTE: Please see Editor's Note to § 4-9-80 for background information on SPDs. This section has no direct bearing on county government.

§ 4-9-81. Authority for increasing size of governing body of district; procedure.

(A) The governing body of any special purpose or public service district, or water and sewer authority, which is elected may provide by resolution for an increase in the size of its governing body. The governing body may not reduce the number of members on its governing body which is serving on January 1, 1987.

(B) The resolution is effective only after approval by a majority of the qualified electors in the district voting in a referendum.

(C) The referendum may be called by resolution of the governing body of the district. The county election commission must call a referendum not later than ninety nor earlier than thirty days after district action.

(D) Notice of the referendum must be published in a newspaper of general circulation in the district at least thirty days prior to the referendum.

(E) If the results of the referendum are favorable, the governing body of the district shall call for a special election or an election to be conducted at the time of the general election to elect additional members of the governing body as provided in the resolution as authorized in subsection (A).

(F) The terms of office of any additional members must be established by the governing body of the district so that they are staggered, if the terms of the existing members of the district are staggered. The terms of any members elected under the provisions of this section must be the same length as those members serving on the governing body at the time the election is held, except as provided in this section, in order to stagger the terms.

(G) All costs associated with conducting the referendum or election, or both, provided for in this section must be borne by the affected district.

HISTORY: 1987 Act No. 28, § 1.

SECTION 4-9-82: Transfer of Assets and Responsibility for Clinical Medical Services by a Public Service District

EDITOR'S NOTE: Please see Editor's Note to § 4-9-80 for background information on SPDs. This section has no direct bearing on county government except as potential transferees of SPD assets.

§ 4-9-82. Transfer by hospital public service districts of assets, properties, and responsibilities for the delivery of medical services.

(A) The governing body of any hospital public service district is authorized to transfer its assets and properties for the delivery of medical services upon assumption by the transferee of the responsibilities of the district for the delivery of medical services as set forth in the legislation creating the hospital public service district.

(B) The transfer is not completed until the question of the transfer has been submitted to and approved by a favorable referendum vote of a majority of the qualified electors of the district voting in the referendum. The referendum vote may be conducted either as a special referendum within the district for this specific purpose or at the same time as a general election.

(C) Provided, however, that the requirements of subsection (B) do not apply to a transfer by a hospital public service district that owns or controls less than one hundred thirty licensed or otherwise authorized acute care hospital beds and is located entirely within a county with a population of less than forty thousand persons, and the:

(1) transfer is to a not-for-profit entity whose governing board is appointed by the Governor, upon the recommendation of the legislative delegation from the county where the hospital public service district is located, and which otherwise is in compliance with subsection (A); or

(2) transfer is to an entity created pursuant to the provisions of Chapter 31 of Title 33, or the provisions of Chapter 35 of Title 33, or the provisions of Articles 15 and 16 of Chapter 7 of Title 44, and whose governing board is appointed by the Governor, upon recommendation of the legislative delegation from the county where the hospital public service district is located; or

(3) transfer is to another governmental entity.

(D) Any hospital public service district which transfers its assets and properties as provided in this section may dissolve the hospital public service district upon

the completion of the transfer and upon the assumption or other appropriate disposition by the transferee of all of the responsibilities and obligations of the hospital public service district.

(E) If the hospital public service district transfers its assets to an entity outside of its geographic boundaries, then any proceeds from the transfer must be used solely for the provision of health care services in a manner consistent with the obligations and responsibilities of the transferring hospital public service district.

HISTORY: 1987 Act No. 93 § 2; 1999 Act No.94.

ATTORNEY GENERAL'S OPINIONS

An arrangement where a public hospital, created by an act of the legislature, establishes a private for-profit entity with hospital assets that enters into a partnership or stockholder arrangement with a private for profit entity establishing an ambulatory surgical center would be prohibited by the state constitution. Op. Atty. Gen., dated November 30, 2001.

SECTION 4-9-85: Requirements When an SPD Is Abolished

EDITOR'S NOTE: Please see Editor's Note to § 4-9-80 for background information on SPDs. When an SPD is abolished, the assets and responsibilities are turned over to the governing body of the county. This section sets out the procedures to be followed.

§ 4-9-85. Examination of financial impact on revenues of county where district is abolished; procedure for refunding taxes.

Within sixty days after the abolishment of a special purpose district (district), the governing body of the county in which the district is located must commence an examination of the financial impact of the abolishment of the district on the revenues of the county. The governing body shall conduct at least two public meetings within the geographical boundaries of the territory formerly comprising the district. The governing body shall advertise in a newspaper of general circulation in the county ten days prior to each meeting. At the meetings the governing body may receive such information as it considers necessary. At the conclusion of the sixty-day period, the county governing body of the county shall make a determination and formulation of the financial impact of the abolishment of the district including, but not limited to, a procedure for any refund of taxes that may have been legally levied and

collected by the county for the district. The determination and formulation must be published by the governing body in a newspaper of general circulation in the county in which the special purpose district formerly was located. The county governing body shall take action by ordinance on the determination and formulation within thirty days after it has been published in the newspaper. Any resident of the area formerly comprising the district has standing to bring an action in a court of competent jurisdiction to enforce the provisions of this section.

HISTORY: 1983 Act No. 81.

Cross Reference --

Procedure to abolish a non-functioning special purpose district, see § 4-11-290.
Procedure to dissolve special purpose districts, see § 6-11-2010.

SECTION 4-9-90: County Council Elections

EDITOR'S NOTE: This section makes single member districts the general rule for electing county council members, but refers to § 4-9-10 for alternatives. It also sets the requirements for terms of office for county council and requires reapportionment within a reasonable time after each federal census. This section must be read in conjunction with the 1965 Voting Rights Act, which requires preclearance by the United States Justice Department prior to any changes to existing election procedures. On June 26, 2013, the U.S. Supreme Court, in Shelby County v. Holder, held that the formula in the Voting Rights Act that determined which states were subject to preclearance was unconstitutional. As of this publication date, counties in South Carolina are not covered jurisdictions and are thus not required to obtain preclearance before implementing a change in voting procedure. In the future, Congress may choose to enact a new formula that may subject counties in South Carolina to preclearance.

§ 4-9-90. Election of council members; reapportionment of single-member election districts; terms of office and vacancies; election at large of chairman; procedure for changing term of office; continuation in office after reapportionment.

Council members must be elected from defined single-member election districts unless otherwise determined under the provisions of subsection (a), (b), or (c) of § 4-9-10 or under the provisions of any plan ordered by a court of competent jurisdiction prior to May 1, 1986. In the event the members of the governing body are required to be elected from defined single-member election districts, they must be elected by the qualified electors of the district in which they reside. All districts must be reapportioned as to population by the county council

within a reasonable time prior to the next scheduled general election which follows the adoption by the State of each federal decennial census. The population variance between defined election districts shall not exceed ten percent.

Members of the governing body of the county shall be elected in the general election for terms of two years or four years as the General Assembly may determine for each county commencing on the second of January next following their election. Vacancies on the governing body shall be filled in the manner of original election for the unexpired terms in the next general election after the vacancy occurs or by special election if the vacancy occurs one hundred eighty days or more prior to the next general election.

In those counties where the members are elected for four year terms, such terms shall be staggered. If necessary, in the initial election for members one-half plus one of the members elected who receive the highest number of votes shall serve terms of four years and the remaining members elected shall initially serve terms of two years only. In those counties in which the chairman of the governing body was elected at large as a separate office prior to the adoption of one of the alternate forms of government provided for in this chapter, the chairman shall continue to be so elected.

In any county in which terms of county council members are for two years only, the council may by ordinance change such terms to four-year staggered terms but such ordinance shall not become effective until approved by a favorable vote of the qualified electors of the county voting in a referendum conducted for that purpose. In the event the referendum is conducted at the time of the general election in which council members are elected, and the vote is favorable on the ordinance, the terms of council members shall automatically be changed to four-year terms except that of those elected in the general election one half plus one of such members who receive the highest vote shall serve four-year terms and the remaining members elected shall serve terms of two years only.

Any council member who is serving a four-year term in a district that has been reapportioned and whose term does not expire until two years after reapportionment becomes effective shall be allowed to continue to serve the balance of his unexpired term representing the people in the new reapportioned district if he is an elector in such reapportioned district. In the event that two or more council members, because of reapportionment, become electors in the same district, an election shall then be required. Provided, however, that if any seat should become vacant after election districts have been reapportioned but prior to the expiration of the incumbent's term of office due to death, resignation, removal, or any other cause, the resulting vacancy shall be filled under the new reapportionment plan in the manner provided by law for the

district that has the same district number as the district from which the council member whose office is vacant was elected. For the purpose of this section, a council member will be deemed a resident of the district he represents as long as he resides in any part of the district as constituted at the time of his election.

HISTORY: 1962 Code § 14-3706; 1975 (59) 692; 1980 Act No. 300, § 4; 1980 Act No. 487; 1982 Act No. 313, §§ 1,2; 1986 Act No. 501.

Cross references --

Filling certain vacancies by appointment by Governor, see §§ 1-3-210, 1-3-220.
Filling of vacancies in county offices, see § 4-11-20.

CASE NOTES

Once county council enacts a valid reapportionment ordinance pursuant to Section 4-9-90, it may not enact another such ordinance until after the next regular apportionment period. Elliott v. Richland County, 322 S.C. 423, 472 S.E.2d 256 (1996). *Ed. Note – See also Elliot v. Richland County, 327 S.C. 175, 489 S.E.2d 195 (1997).*

In the absence of specific statutory or constitutional provision, public officers hold over de facto until their successors are appointed or elected and qualify. Bradford v. Byrnes, 221 S.C. 255, 70 S.E.2d 228 (1952).

ATTORNEY GENERAL'S OPINIONS

Municipal councils were created by the legislature; therefore, only the legislature may limit the number of terms a member might serve. A municipal council does not have the authority to enact term limits on its council members, regardless of the method. Op. Atty. Gen., dated March 26, 2010.

A council member who moved from the district from which he was elected has vacated his office, as he is no longer qualified to serve from that district. However, the member of county council would continue to serve in a de facto capacity until his successor could be selected. Op. Atty. Gen., dated March 28, 2006.

A council member is considered a resident of a district as long as he resides in any part of that district at the time of the election. The fact that the candidate did not live in the district at the time of his filing for office would not preclude him from being a candidate. Such interpretation would also be consistent with the candidate's Statement of Intention of Candidacy pursuant to S.C. Code Ann. § 7-11-15, which contained the affirmation by the candidate that "I hereby affirm that I meet or will meet by the time of the general or special election, or as otherwise required by law, the qualifications to hold this office." Op. Atty. Gen., dated April 21, 2004.

When two or more council members become electors in the same district due to reapportionment, an election is required under Section 4-9-90 despite one party's intention not to seek reelection to the combined district as the announcement of one's intention does not vacate the seat. Op. Atty. Gen., dated February 14, 2002.

The governor is authorized pursuant to Article 6, § 8 of the South Carolina Constitution and S.C. Code Ann. § 8-1-100 to declare a vacancy in the office of county council should a member of that council be convicted of a violation of S.C. Code Ann. § 12-54-40(b)(6)(c). Unpublished Op. Atty. Gen., dated February 3, 1998.

Nothing in state law would technically preclude a member of county council presently under indictment and suspension from running for reelection. If reelected, however, he would not be permitted to serve while under indictment and subject to the suspension order. In addition, if the council member is convicted of a felony either prior to the election or following a successful bid for reelection, he would be barred from serving by the state constitution. Unpublished Op. Atty. Gen., dated May 5, 1998.

Members of county council whose terms have expired, but whose successors have not been selected in a timely manner due to litigation involving a reapportionment plan, would continue to hold office as de facto officers until their successors are elected. Unpublished Op. Atty. Gen., dated July 15, 1996.

County council does not have the authority to set term limits for its members. Unpublished Op. Atty. Gen., dated August 14, 1995.

A vacancy on county council occurring less than 180 days prior to the next election would be filled in next general election. The governor is authorized to appoint a person to fill the unexpired term and the officeholder would serve until January 2 when the newly elected officeholder takes office. 1990 Op. Atty. Gen., No. 90-41.

The commencement of the term of office for a county supervisor is January second next following his election. 1987 Op. Atty. Gen., No. 87-27(1).

County council would have the responsibility to draw the single-member district lines if the county desires to select its council members from single-member districts. 1987 Op. Atty. Gen., No. 87-68.

The chairman of the council-administrator form of county government may not be given additional duties that conflict with duties of other county officials. 1976-77 Op. Atty. Gen., No. 77-50.

If a county selects the council-supervisor form of county government provided for in [Article 5 of Chapter 9 of Title 40 of the 1976 Code], the Home Rule Act, the supervisor will serve as chairman of the council pursuant to [§ 4-9-410, 1976 Code], but will not be elected to that position by virtue

of [§ 4-9-90, 1976 Code]. 1974-75 Op. Atty. Gen., No. 4167.

SECTION 4-9-100: County Council: Dual Office Holding and Salary Increases

EDITOR'S NOTE: This section prohibits dual office holding by members of county councils, including supervisors. An exception has been carved out for ex officio membership on boards or commissions (See Attorney General's opinions, below).

Also regulated by this section are salary increases for county council. There is a conflict between this section and § 4-9-410 over whether a county supervisor's salary may be raised during his term of office. An Attorney General's opinion states that this section, which authorizes such increases, should prevail because the sections are irreconcilably in conflict and this section is the latest statement of the legislature on the point.

§ 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 supervisor shall not vote on the question when it is considered by council.**

HISTORY: 1962 Code § 14-3707; 1975 (59) 692; 1980 Act No. 300, § 5; 1985 Act No. 114, § 1.

Cross Reference --

Constitutional prohibition on dual office holding, see S.C. Const., art. VI, § 3.
County transportation committee not an office for dual office holding purposes, see

§ 12-28-2740.

Research and Practice References --

56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 276.
63A Am. Jur. 2d Public Officers and Employees §§ 64, 86.
20 C.J.S. Counties § 76.
67 C.J.S. Officers §§ 27-33, 203.

A.L.R. and L. Ed. Annotations –

Incompatibility, under common-law doctrine, of office of state legislator and position or post in local political subdivision. 89 A.L.R.2d 632.

CASE NOTES

A municipal police officer is not a constable exempt from the constitutional provisions forbidding dual office holding, therefore simultaneously holding a position on Berkeley County Council would violate the dual office holding provisions. Richardson v. Town of Mt. Pleasant, 350 S.C. 291, 566 S.E.2d 523 (2002).

Criteria to be considered in making the distinction between an officer and an employee include whether the position was created by the legislature; whether the qualifications for appointment are established; whether the duties, tenure, salary, bond and oath are prescribed or required; whether the one occupying the position is a representative of the sovereign; among others. No single criteria is conclusive; neither is it necessary that all the characteristics of an office or officer be present. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

The following definitions are generally accepted as the distinction between a public officer and a public employee: One who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing, and not occasional or intermittent, is a public officer. Conversely, one who merely performs the duties required of him by persons employing him under an express contract or otherwise, though such persons be themselves public officers, and though the employment be in or about a public work or business, is a mere employee. Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907).

ATTORNEY GENERAL'S OPINIONS

Membership on a county library board of trustees established pursuant to S.C. Code Ann. § 4-9-35 would most probably constitute an office for dual office holding purposes. It would be necessary to examine the county ordinance with respect to the board in making a determination. Op. Atty. Gen.,

May 13, 2002.

Simultaneously holding the positions of a member of a school board and a member of county council would constitute dual office holding. Op. Atty. Gen., dated May 6, 2002.

Personnel classification and salary schedules for county employees are determined by county council pursuant to authority granted by Section 4-9-30(7). Council members are specifically excluded from Section 4-9-30(7) and their salary and compensation must be set in accordance with Section 4-9-100. Op. Atty. Gen., dated October 18, 2001.

Service on both a legal advisory board for the Department of Natural Resources and on county council would not contravene the dual office holding prohibitions in the state constitution. Op. Atty. Gen., dated February 27, 2001.

A dual office holding situation would exist if a person were to serve simultaneously as county council and as a member of the State Board of Registration of Foresters. Op. Atty. Gen., dated March 26, 2001.

Service on county council and on a county development board (ex officio) would not contravene the dual office holding prohibitions of the state constitution. Op. Atty. Gen., dated November 20, 2001.

Simultaneously serving as a municipal police officer and as a member of county council would violate the dual office holding prohibitions of the state constitution. However, if an individual holds one office on the date he assumes the second office, for dual holding purposes he is deemed by law to have vacated the office but stays in a de facto capacity until his successor is found. Op. Atty. Gen., dated July 31, 2000.

Serving simultaneously as a member of the county election commission and as a member of county council would contravene the dual office holding prohibitions of the state constitution. Op. Atty. Gen., dated August 23, 2000.

It would appear that an increase in salary for county council members would not necessarily have to be contained in a distinct and separate ordinance, but may be a part of another ordinance, such as a budget ordinance. Unpublished Op. Atty. Gen., dated February 17, 1999.

The payment of longevity increases to members of county council would seem to run directly counter to the general rule that salary pertaining to an office is incident to the office itself and not to the person discharging the duties of the office. Accordingly, it is likely that if a court in South Carolina were to address this question, it would conclude under the present law, the payment of longevity salary increases to members of county council is improper. Unpublished Op. Atty. Gen., dated February 17, 1999.

Using the Arizona case [Maricopa County v. Rodgers, 78 P.2d 989 (Ariz. 1938)] as a guide, a court interpreting this Section 4-9-100 may conclude that the intent of the General Assembly in adopting this legislation was to assure that members of county council doing, in substance, the same work, are to receive at all times the same salaries. Unpublished Op. Atty. Gen., dated February 17, 1999.

If a county is not under any legal or contractual obligation to pay council members bonuses, the payment of bonuses would be inappropriate. Unpublished Op. Atty. Gen., dated February 17, 1999.

A county council member would be entitled to compensation for service as ex officio member of a solid waste joint agency. Unpublished Op. Atty. Gen., dated June 2, 1999.

If an individual were to simultaneously serve as an associate municipal court judge and as a member of County Council, the dual office holding prohibitions of the constitution would be violated. Unpublished Op. Atty. Gen., dated June 22, 1998.

A code enforcement officer is an office for dual office holding purposes. Unpublished Op. Atty. Gen., dated April 9, 1997.

Membership on the Marlboro County Economic Development Partnership probably would not be considered an office for dual office holding purposes, because the duties of the office are largely advisory and promotional. Unpublished Op. Atty. Gen., dated June 12, 1997.

Setting council member salaries as a percentage of a state legislator's salary would unlawfully delegate county council's authority to the General Assembly without setting forth any standards for carrying out the ordinance. The ordinance is also troubling because it bases council member salaries on the adoption of future laws by the General Assembly and may result in the unconstitutional enactment of a law for a specific county. Unpublished Op. Atty. Gen., dated June 24, 1997.

The transfer of authority from the county transportation committee to county council to expend "C" funds would probably constitute an "office of honor" for dual office holding purposes. Unpublished Op. Atty. Gen., dated December 18, 1996. *Ed. Note – Subsequent to this opinion, § 12-28-2740 was amended to allow dissolution of the county transportation committee and this section now states that a county transportation committee position is not an office for dual office holding purposes.*

County council serving on or as the county's transportation committee, pursuant to § 12-27-400, probably violates the dual office holding provisions in state law. Unpublished Op. Atty. Gen., dated May 16, 1995. *Ed. Note – It is possible that by designating the entire county council as the transportation committee, the legislative delegation has given county council additional duties, instead of creating a separate and additional public office.*

Article 17, § 1A of the S.C. Constitution provides that "no person may hold two offices of honor or profit at the same time ...," with exceptions specified for an officer in the militia, member of a

lawfully and regularly organized fire department, constable, or a notary public. For this provision to be contravened, a person concurrently must hold two public offices that have duties involving the exercise of some portion of the sovereign power of the state. Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its tenure, duties or salary, or require qualifications or an oath for the position. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980). 1991 Op. Atty. Gen., No. 91-3.

A county council may elect not to reimburse its members for travel expenses incurred in carrying out their duties, or may place a limit on the amount to be appropriated for travel expenses. 1991 Op. Atty. Gen., No. 91-31.

If county council members' travel expenses are to be reimbursed, such reimbursement must be based upon actual expenses, rather than a per diem or flat rate that does not take actual expenses into account. 1991 Op. Atty. Gen., No. 91-39.

If no funds for county council travel expenses are appropriated, § 8 of Article 10 of the S.C. Constitution would probably be violated if expenses were then reimbursed, absent a supplemental or amendatory appropriation. 1991 Op. Atty. Gen., No. 91-39.

A county council member may serve ex officio on his county's community services commission and economic development commission. Ex officio membership on a commission is not an office for dual office holding purposes. Unpublished Op. Atty. Gen., dated July 18, 1989.

Whenever possible, courts will construe conflicting statutes so as to give effect to both. Where, as here, reconciliation is not possible, the most recent expression of the legislative will is the law. Feldman v. South Carolina Tax Commission, 203 S.C. 40, 26 S.E.2d 22 (1943). Thus, the provisions of § 4-9-100, permitting a salary increase during the supervisor's term of office, would prevail over the conflicting provisions of § 4-9-410 of the Code. Based on the foregoing, it is the opinion of this Office that the salary of county supervisor may be increased during his term of office. 1987 Op. Atty. Gen., No. 87-7.

Under the Home Rule Act, county councilmen may not be paid fixed amounts as expenses but are entitled to be reimbursed only for actual expenses incurred; an annual allowance of $1200.00 for each councilman is invalid. 1978 Op. Atty. Gen., No. 78-66.

After adoption of a form of government provided by the Home Rule Act, the county council can initially set the salary of its members; however, if the county council later changes the salary of its members, that change cannot become effective until after the next general election for county council members when the terms of office of the members elected therein begin. 1976-77 Op. Atty. Gen., No. 77-225.

Members of the county council may receive their compensation in annual or semiannual payments.

1976-77 Op. Atty. Gen., No. 77-24.

Under the Home Rule Act, county council members may be reimbursed only for actual expenses, no per diem being allowed. 1975-76 Op. Atty. Gen., No. 4545.

SECTION 4-9-110: Council Chairman and Other Officers Required

EDITOR'S NOTE: This section requires the selection of a council chairman, vice-chairman, and clerk to council. It also requires monthly public meetings, requires minutes of the meetings to be kept and to be made public, and allows county councils to adopt their own rules.

§ 4-9-110. Council shall select chairman and other officers; terms of office; appointment of clerk; frequency and conduct of meetings; minutes of proceedings.

> **The council shall select one of its members as chairman, except where the chairman is elected as a separate office, one as vice-chairman and such other officers as are deemed necessary for such terms as the council shall determine, unless otherwise provided for in the form of government adopted. The council shall appoint a clerk to record its proceedings and perform such additional duties as the council may prescribe. The 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. All meetings shall be conducted in accordance with the general law of the State of South Carolina affecting meetings of public bodies. Special meetings may be called by the chairman or a majority of the members after twenty-four hours' notice.**
>
> **The council shall determine its own rules and order of business. It shall keep a journal in which shall be recorded the minutes of its proceedings which shall be open to public inspection.**

HISTORY: 1962 Code § 14-3708; 1975 (59) 692.

CASE NOTES

There is no requirement, in § 30-4-60 or elsewhere in the FOI Act, that meetings of a public body be conducted in a public building. The only specific requirements are that the meeting be open to the public and be done at minimal cost or delay. Wiedemann v. Town of Hilton Head, 330 S.C. 532, 500 S.E.2d 783 (1998), Aff’d in part, rev’d, in part, and remanded (1998). Aff’d 344 S.C. 233, 542 S.E.2d 752 (Ct.App. 2001).

The interests of the municipality in conducting the meeting outside the municipal limits should be weighed against the cost or delay to the public. Wiedemann v. Town of Hilton Head, 330 S.C.532,500 S.E.2d 783 Aff'd in part, rev'd, in part, and remanded (1998). Aff'd 344 S.C. 233, 542 S.E.2d 752 (Ct.App. 2001) *Ed. Note – This case, although factually involving a municipal council meeting, interprets the South Carolina FOI Act requirements for all public entities.*

ATTORNEY GENERAL'S OPINIONS

Neither § 4-9-110 nor the FOI Act requires that meetings of the county council be held within the geographic boundaries of the county. 1991 Op. Atty. Gen., No. 91-24. *Ed. Note – But see Wiedemann v. Town of Hilton Head, 330 S.C. 532, 500 S.E.2d 783 Aff'd in part, rev'd, in part, and remanded (1998). Aff'd 344 S.C. 233, 542 S.E.2d 752 (Ct.App. 2001) above.*

"Public notice" as used in § 4-9-110 is the same term as used in § 30-4-80, and public notice requirements should follow the notice provisions of the FOI Act. 1983 Op. Atty. Gen., No. 83-64.

Under the council-administrator form of government, the chairman is selected by the council and his salary is set by the council. 1976-77 Op. Atty. Gen., No. 77-97.

The chairman of the council-administrator form of county government may not be given additional duties that conflict with duties of other county officials. 1976-77 Op. Atty. Gen., No. 77-50.

A member of county council may withdraw an oral resignation if it has not been accepted by a majority of members present when a quorum exists. 1975-76 Op. Atty. Gen., No. 4353.

SECTION 4-9-120: Procedures for Adoption of Ordinances

EDITOR'S NOTE: This section is self-explanatory.

§ 4-9-120. Procedures for adoption of ordinances; proceedings and all ordinances shall be recorded.

> **The council shall take legislative action by ordinance which may be introduced by any member. With the exception of emergency ordinances, all ordinances shall be read at three public meetings of council on three separate days with an interval of not less than seven days between the second and third readings. All proceedings of council shall be recorded and all ordinances adopted by council shall be compiled, indexed, codified, published by title and made available to**

public inspection at the office of the clerk of council. The clerk of council shall maintain a permanent record of all ordinances adopted and shall furnish a copy of such record to the clerk of court for filing in that office.

HISTORY: 1962 Code § 14-3709; 1975 (59) 692.

CASE NOTES

The county adopted rules of procedure that provided that an ordinance may be given first reading at any meeting of the council by title only. Minutes of the first meeting revealed that county council discussed the proposed ordinance at length. Nothing in the state constitution, which authorized and established home rule, requires that an ordinance be in written form when it receives first reading. McSherry v. Spartanburg Cty. Council, 371 S.C. 586, 641 S.E.2d 431 (2007).

The procedure for adoption of ordinances under Section 4-9-120 was not violated as the planning commission properly recommended the comprehensive plan to county council prior to the ordinance being given first reading. Appellant was not deprived of due process of law because he was not deprived of his property due to the adoption of the plan nor due to the manner of the plan's adoption. McClanahan v. Richland County, 350 S.C. 433, 567 S.E.2d 240 (Ct.App. 2002).

Section 4-9-120 does not require county council to make specific findings that amendment of ordinance is in the public interest. Smith v. Georgetown County Council, 292 S.C. 235, 355 S.E.2d 864 (Ct. App. 1987).

ATTORNEY GENERAL'S OPINIONS

A zoning ordinance provision stating that all future amendments or modifications in the flood maps are incorporated by reference would constitute an unlawful delegation of legislative power. While a legislative body may incorporate other legislation or rules, regulations, policies, or maps as these may presently exist, any incorporation of future changes to such enactment or documents unlawfully delegates the power to alter the ordinance to another body, person, or entity. Op. Atty. Gen., dated April 14, 2005.

Repealing or amending an existing county ordinance is considered a "legislative action" and thus must be done in accordance with the procedures outlined in § 4-9-120. If the procedures are not followed, the existing ordinance will remain in effect. Op. Atty. Gen., dated September 30, 2002.

A time extension is not an amendment or revision of an ordinance. Instead, it is a non-legislative act affecting the execution of a law rather than the substance of the law. Therefore, a county council may, by resolution, extend the time set in ordinances for the county administrator to execute agreements. Unpublished Op. Atty. Gen., dated March 21, 2000.

No state law prescribes an outer time limit within which a proposed ordinance must be passed or become null and/or void. County council is a continuing body and does not have discrete terms as does the General Assembly, and pending legislation would not become null and void after the passage of a set amount of time as it does when the General Assembly adjourns sine die. No state law appears to prescribe a particular action to be taken by a county council to maintain the pending status of an ordinance. Unpublished Op. Atty. Gen., dated Aug. 1, 1994.

Under the Home Rule Act, a county council must comply with the requirements of [§ 4-9-120, 1976 Code] in passing temporary as well as permanent ordinances. 1975-76 Op. Atty. Gen., No. 4410.

SECTION 4-9-130: Public Hearings, Adoption of Standard Codes, and Emergency Ordinances

EDITOR'S NOTE: In addition to the requirement for open meetings specified in this section, council meetings are also subject to the Freedom of Information Act, § 30-4-10, et seq.

The notice of the public hearing required before adoption of the county budget contained in § 4-9-130 has been superseded by a more detailed notice with more direction as to the form of the notice contained in § 6-1-80. The new notice must contain several financial figures and estimates that will require the assistance of the finance and property tax officials.

§ 4-9-130. Public hearings on notice must be held in certain instances; adoption of standard codes or technical regulations and furnishing copies thereof; emergency ordinances.

Public hearings, after reasonable public notice, must be held before final council action is taken to:

(1) adopt annual operational and capital budgets;

(2) make appropriations, including supplemental appropriations;

(3) adopt building, housing, electrical, plumbing, gas and all other regulatory codes involving penalties;

(4) adopt zoning and subdivision regulations;

(5) levy taxes;

(6) sell, lease or contract to sell or lease real property owned by the county.
The council may adopt any standard code or technical regulations authorized under § 6-9-60 by reference thereto in the adopting ordinance. The procedure and requirements governing the ordinances shall be as prescribed for ordinances listed in (1) through (6) above.

Copies of any adopted code of technical regulations shall be made available by the clerk

of council for distribution or for purchase at a reasonable price.

Not less than fifteen days' notice of the time and place of such hearings shall be published in at least one newspaper of general circulation in the county.

To meet public emergencies affecting life, health, safety or the property of the people, council may adopt emergency ordinances; but such ordinances shall not levy taxes, grant, renew or extend a franchise or impose or change a service rate. Every emergency ordinance shall be designated as such and shall contain a declaration that an emergency exists and describe the emergency. Every emergency ordinance shall be enacted by the affirmative vote of at least two-thirds of the members of council present. An emergency ordinance is effective immediately upon its enactment without regard to any reading, public hearing, publication requirements, or public notice requirements. Emergency ordinances shall expire automatically as of the sixty-first day following the date of enactment.

HISTORY: 1962 Code § 14-3710; 1975 (59) 692; 1982 Act No. 351, § 1.

Cross references --

Charge for legal advertisements in newspapers, see §§ 15-29-80 to 15-29-100.
Mandatory building codes adoption and enforcement, see § 6-9-10 et seq.
Special public notice of budget information, see § 6-1-80.
Special called meeting and public hearing for override of millage limitation, see § 6-1-320(C).
FOI Act requires notice, see § 30-4-80.
Emergency ordinance, price gouging, see § 39-5-145

CASE NOTES

A contract between the county and a private company that transfers the operation and management of the county landfill to the company did not require a public hearing, pursuant to § 4-9-130(6), prior to entering into the contract where the landfill was operated on land leased by the county from a third party. Citizens for Lee County v. Lee County, 308 S.C. 23, 416 S.E.2d 641 (1992).

The fact that the county passed a motion to place property for sale at a public auction was not a decision to sell within the meaning of a deed clause that the grantor of land to the county would have the right to repurchase the property in the event the county decided to sell said premises where council retained the right to reject all bids and withdrew plans to place property for auction when it became aware of option, and where the county had not held a public hearing as required by § 4-9-130. Amick v. Richland County, 273 S.C. 300, 255 S.E.2d 855 (1979).

ATTORNEY GENERAL'S OPINIONS

The elected body of a fire district may incur new debt after a public hearing pursuant to 6-1-80. The county would also be required hold a public hearing under 4-9-130 before approving the new debt service millage for the fire district. Op. Atty. Gen., dated September 19, 2012.

County Council may appropriate money for the funeral expenses of deceased indigent persons as county governments are authorized to appropriate and expend public funds for services and property that serve a public purpose under S.C. Code § 4-9-30. Expenditures of this nature would have to be done by appropriation under procedures found in S.C. Code § 4-9-130. Op. Atty. Gen., dated June 25, 2001.

Where real property is to be sold or leased, or a contract to sell or lease such real property is contemplated by the Board, § 4-9-130 concerning notice and public hearing requirements must be followed by county council. 1986 Op. Atty. Gen., No. 86-78.

There appears to be no prohibition in Home Rule Act against county council's approving funding for additional deputy positions in supplemental appropriation, even though such positions were not funded by council in adoption of its annual appropriation ordinance. 1985 Op. Atty. Gen., No. 85-115.

Section 4-9-130 requires fifteen days notice to be given before public hearings on certain actions that are specifically enumerated within that section. There is no specific time requirement for notice to be given prior to a public hearing on the removal of an administrator. Section 4-9-620 requires the public hearing on the removal of the administrator to be held at a public meeting of county council. There is no statute requiring the council to wait until the meeting after a public hearing to vote on the removal of the administrator. Unpublished Op. Atty. Gen., dated March 29, 1979.

Under the Home Rule Act, the intent of notice requirements for public hearings is that notice be given before each hearing is held, a transfer of county funds from one department to another would not require holding a public hearing before final council action is taken. 1975-76 Op. Atty. Gen., No. 4411.

SECTION 4-9-140: Budgets, Appropriations and Taxes

EDITOR'S NOTE: This section requires that the fiscal year shall begin on July 1 for all counties. This uniform fiscal year also matches that used by the state and most if not all school districts. It requires an annual budget, authorizes supplemental budgets and sets out the requirements for each.

§ 4-9-140. Designation of fiscal and budget years; annual fiscal reports; adoption of budgets; levying and collection of taxes; supplemental appropriations; obtaining reports, estimates, and statistics.

The fiscal year of the county government shall begin on the first day of July of each year and shall end on the thirtieth day of June next following, and the fiscal year shall constitute the budget year of the county government. All county offices, departments, boards, commissions or institutions receiving county funds shall make a full, detailed annual fiscal report to the county council at the end of the fiscal year.

County council shall adopt annually and prior to the beginning of the fiscal year operating and capital budgets for the operation of county government and shall in such budgets identify the sources of anticipated revenue including taxes necessary to meet the financial requirements of the budgets adopted. Council shall further provide for the levy and collection of taxes necessary to meet all budget requirements except as provided for by other revenue sources.

Council may make supplemental appropriations which shall specify the source of funds for such appropriations. The procedure for approval of supplemental appropriations shall be the same as that prescribed for enactment of ordinances.

For the purposes of this section a supplemental appropriation shall be defined as an appropriation of additional funds which have come available during the fiscal year and which have not been previously obligated by the current operating or capital budget. The provisions of this section shall not be construed to prohibit the transfer of funds appropriated in the annual budget for purposes other than as specified in such annual budget when such transfers are approved by the council.

In the preparation of annual budgets or supplemental appropriations, council may require such reports, estimates and statistics from any county agency or department as may be necessary to perform its duties as the responsible fiscal body of the county.

HISTORY: 1962 Code § 14-3711; 1975 (59) 692; 1977 Act No. 56.

Cross references --

Fiscal year of state government, see S.C. Const., art. 10, § 10.
For prohibition on new local taxes, see § 6-1-310.
For restriction on business license taxes, see § 6-1-315.
Limitation on millage rate increases, see § 6-1-320.
Local fee definition and requirements, see § 6-1-330.

CASE NOTE

A business license tax ordinance was not invalid because Article 10, § 7(b) and § 4-9-140 require adoption of a budget based on existing or concurrently levied revenue where the business license tax ordinance was adopted after the budget. That ground would form a basis for a challenge to the budget ordinance. Business License Opposition Committee v. Sumter County, 304 S.C. 232, 403 S.E.2d 638 (1991).

ATTORNEY GENERAL'S OPINIONS

County council has broad discretion in exercising its budgetary authority, but cannot alter the treasurer's budget in such a way that would prevent the office from functioning properly. Council may increase the budget to allow additional personnel at a satellite office. If the treasurer chose not to fill the position, he would be prohibited from using the funds for another purpose. Op. Atty. Gen., dated May 7, 2012.

With reference to budgetary matters, while it's true that the council exercises totally the budgetary authority of a county and can decrease, increase, or otherwise alter appropriations for county offices, nevertheless, it cannot so decrease the appropriations of an elected official's office so as to prevent the proper functioning thereof. Council would be required to pick up where a grant or other special revenue funds ended**,** even if the purpose for the hiring may no longer exist and the county did not provide the original funding for the position. Op. Atty. Gen., dated October 26, 2007.

Funds may be transferred in mid- budget year from the register of deeds office to another department. However, county council must approve the transfer and do so by an ordinance. Accordingly, the county administrator acting alone may not effect such a transfer without the satisfaction of this requirement. Op. Atty. Gen., dated May 8, 2006.

It would be inappropriate to go outside the normal appropriations process in order to spend public monies for an item for which there was no appropriation. All appropriations by a county must be reflected in its budget adopted pursuant to § 4-9-140. Op. Atty. Gen., dated March 1, 2005.

County council possesses the discretion to control and direct spending in their respective county, including maintenance of a reserve account. However, the county council would not be precluded from ending such a practice. One of the most basic rules is that one legislature may not bind its successors by its legislative acts. Similarly, one council cannot bind another council in discretionary spending. Therefore, a future council would be authorized to make spending decisions that would eliminate any surplus. Op. Atty. Gen., dated November 18, 2004.

An agreement between the sheriff, clerk of court, and county administrator to sell confiscated

weapons to gun dealers and use the proceeds to purchase equipment and supplies for the sheriff's department would be ineffective. Any agreement that gun forfeiture funds will be used by the sheriff's department must be approved by county council. Unpublished Op. Atty. Gen., dated March 31, 1997.

There is no public hearing required prior to the introduction of a proposed zoning ordinance amendment. Section 4-9-130 requires that a public hearing must be held upon fifteen days notice before final action is taken on a zoning ordinance, not before an ordinance or amendment is introduced. Unpublished Op. Atty. Gen., dated June 2, 1997.

Council's distribution of grant monies originating from the state, and not generated by county tax revenue, to school districts would not violate Article X of the South Carolina Constitution. Unpublished Op. Atty. Gen., dated November 19, 1996.

While the state constitution authorizes joint ventures among the state and/or the various political subdivisions, the levying of taxes by a political subdivision merely for the use and benefit of another political subdivision would not be acceptable. Unpublished Op. Atty. Gen., dated Oct. 28, 1994.

A county may incur bonded indebtedness to assist in construction of municipal water lines if county council determines public and corporate purposes are being served. A county's levying of taxes merely for the benefit of the municipality would violate §§ 5 and 7 of Article 10 of the S.C. Constitution. 1991 Op. Atty. Gen., No. 91-49.

All appropriations by a county must be reflected in its budget adopted pursuant to § 4-9-140. A county is without authority to create or designate an independent entity to be a millage agency, such term being construed to mean the authority to levy taxes. If funds are to be provided such an agency, the same must be for a public purpose and must be set forth in the county's budget. 1988 Op. Atty. Gen., No. 88-79.

A county cannot decrease its funding for the salaries of the auditor and treasurer by the amount of a state increase in the funding for those officers. 1985 Op. Atty. Gen., No. 85-113.

There appears to be no prohibition in Home Rule Act against county council's approving funding for additional deputy positions in supplemental appropriation, even though such positions were not funded by council in adoption of its annual appropriations ordinance. 1985 Op. Atty. Gen., No. 85-115.

A county governing body cannot alter duties of county treasurer. Any duplication of duties by treasurer and finance department may be eliminated by providing that the treasurer's office performs such duties. Duties assigned to the treasurer cannot be removed from that office. 1984 Op. Atty. Gen., No. 84-15.

Expenses, such as salaries paid to county employees, incurred by county during one fiscal year, may be paid only from funds appropriated for that particular year. 1984 Op. Atty. Gen., No. 84-48.

Contracts executed by county councils and county agencies for terms in excess of one year are binding; however, the contract should contain a provision subjecting it to cancellation if funds are not available in succeeding years. 1983 Op. Atty. Gen., No. 83-89.

SECTION 4-9-145: Code Enforcement Officers

EDITOR'S NOTE: This section allows county councils to commission constables who will serve as county code enforcement officers. The prohibition against code enforcement officers making a custodial arrest means that the code enforcement officer cannot take someone into custody and bring them to the jail. One consequence of this section is that a code enforcement officer may only enforce ordinances by using the ordinance summons provided for in § 56-7-80. The other consequence is that council cannot, as a practical matter, use code enforcement officers to create a county police force because a code enforcement officer would not have the authority to make a custodial arrest in the case of a serious crime.

A 2001 act amended § 4-9-145 to allow litter control officers to exercise the power of custodial arrest for litter violations and secondary violations discovered incident to a litter arrest. The litter control officer would be required to be certified by the Criminal Justice Academy and there are limits on the number of litter officers with custodial arrest authority based on the number a county has on July 1, 2001, or based on population.

§ 4-9-145. Litter control officers; custodial arrest authority; numbers of officers; powers and duties.

(A) Except as provided in subsection (B), the governing body of a county may appoint and commission as many code enforcement officers as may be necessary for the proper security, general welfare, and convenience of the county. These officers are vested with all the powers and duties conferred by law upon constables in addition to duties imposed upon them by the governing body of the county. However, no code enforcement officer commissioned under this section may perform a custodial arrest, except as provided in subsection (B). These code enforcement officers must exercise their powers on all private and public property within the county. The governing body of the county may limit the scope of a code enforcement officer's authority or the geographic area for which he is authorized to exercise the authority granted.

(B)(1) The number of litter control officers vested with custodial arrest authority who are appointed and commissioned pursuant to subsection (A) must

not exceed the greater of:

(a) the number of officers appointed and commissioned by the county on July 1, 2001; or

(b) one officer for every twenty-five thousand persons in the county, based upon the 2000 census. Each county may appoint and commission at least one officer, without regard to the population of the county.

(2)(a) A litter control officer appointed and commissioned pursuant to subsection (A) may exercise the power of arrest with respect to his primary duties of enforcement of litter control laws and ordinances and other state and local laws and ordinances as may arise incidental to the enforcement of his primary duties only if the officer has been certified as a law enforcement officer pursuant to Article 9, Chapter 6, Title 23.

(b) In the absence of an arrest for a violation of the litter control laws and ordinances, a litter control officer authorized to exercise the power of arrest pursuant to subitem (a) may not stop a person or make an incidental arrest of a person for a violation of other state and local laws and ordinances.

(3) For purposes of this section, the phrase 'litter control officer' means a code enforcement officer authorized to enforce litter control laws and ordinances.

History: 1990 Act No. 598, § 3; 1992 Act No. 411; 1996 Act No. 373; 2001 Act No. 109

Cross reference --

Authorization for code enforcement officers to use an ordinance summons, see § 56-7-80.
Requirement that law enforcement officers attend the Criminal Justice Academy, see § 23-23-40.
Agreements to allow investigations in multiple jurisdictions or temporary transfer of officers, see § 23-1-215.
Prohibition against a person not a sheriff or deputy sheriff wearing the official badge consisting of five or six pointed star with the Great Seal of South Carolina inscribed, see § 23-15-140.

ATTORNEY GENERAL'S OPINIONS

A member of a private security force would generally not have law enforcement authority to enforce rules of the property owner's association below the high-water mark. However, the private security force could be appointed as code enforcement officers by the county to enforce the county's ordinances below the high-water mark. Op. Atty. Gen., dated October 19, 2012.

The Attorney General has opined that governmental entities are precluded from delegating their police powers to private entities. The statute allows for the employment of code enforcement officers

to enforce ordinances but stops short of allowing contracting with private entities for a county to exercise its code enforcement powers. Thus the Attorney General would advise that it would be impermissible for a county to delegate the enforcement of its tree ordinance to a homeowner's association. Op. Atty. Gen., dated August 4, 2010.

A litter control officer, as a Class 3 Officer, only has arrest authority for the ordinances he has been charged with enforcing. Code enforcement officers that are certified as Class 3 officers do not have full police custodial powers and their authority is limited to enforcing certain county ordinances. Op. Atty. Gen., dated May 6, 2009.

Serving simultaneously as a code enforcement officer and a municipal construction and appeals board member would violate the constitution's dual office holding prohibitions. Op. Atty. Gen., dated February 9, 2001.

Code enforcement officers are not entitled to use uniform traffic tickets as they are not law enforcement officers and have not been given the power of custodial arrest. Op. Atty. Gen., dated November 8, 2000. *Ed. Note – This opinion was issued prior to the revision of § 4-9-145 in 2001.*

A code enforcement officer is an officer for dual office holding purposes. Unpublished Op. Atty. Gen., dated April 9, 1997.

Code enforcement officers have all the powers and duties conferred by law on constables, and their cars would qualify as police vehicles, allowing them to use blue lights. Code enforcement officers on the county payroll and performing all general law enforcement duties are "regular salaried law enforcement officers," except that they cannot make custodial arrests, and they could be deemed exempt from the concealable weapons law exclusions and issued firearms on a case-by-case basis. Unpublished Op. Atty. Gen., dated April 24, 1997.

A proposed contract whereby private security guards are appointed as code enforcement officers would be valid as long as the municipality limits the duties of these officers to issuing ordinance summons as set forth in Section 56-7-80. These private security guards, however, would have the same arrest authority as a private citizen and would not have the authority to engage in hot pursuit or transport an individual that has been arrested to jail. Unpublished Op. Atty. Gen., dated May 23, 1995.

It appears that code enforcement officers would be authorized to use blue lights on their county vehicles. 1993 Op. Atty. Gen., No. 93-58.

The appointment of a code enforcement officer, pursuant to § 4-9-145, to provide supplemental law enforcement for a municipality could constitute a conflict with § 4-9-30(5) inasmuch as it could be duplicative of duties and functions already performed by the sheriff. Also, such might be considered a restructuring or reorganization of the sheriff's department; therefore, such an appointment would

not be authorized absent compliance with the referendum requirements of § 4-9-30(5). 1991 Op. Atty. Gen., No. 91-56. *Ed. Note – This opinion was based upon language deleted from § 4-9-30(5) in the 1991 amendment and language deleted from § 4-9-145 in the 1992 amendment.*

SECTION 4-9-150: Audits of County Records

EDITOR'S NOTE: 2002 Act No. 356, which was the budget codification act, amended § 4-9-150 to require annual county audited statements to be filed with the comptroller general by January 1 of the year following the close of a fiscal year or by the end of any extension granted by the comptroller general. Funds to be distributed to a county that is late would be withheld until receipt of the audit.

Act No. 164 of 2005 amended § 4-9-150 so as to permit counties to designate an accountant for three years without a competitive bid instead of one year.

§ 4-9-150. Audits of county records; designation of auditors; public inspection of report.

> **The council shall provide for an independent annual audit of all financial records and transactions of the county and any agency funded in whole by county funds and may provide for more frequent audits as it considers necessary. Special audits may be provided for any agency receiving county funds as the county governing body considers necessary. The audits must be made by a certified public accountant or public accountant or firm of these accountants who have no personal interest, direct or indirect, in the fiscal affairs of the county government or any of its officers. The council may, without requiring competitive bids, designate the accountant or firm annually or for a period not exceeding three years. The designation for any particular fiscal year must be made no later than thirty days after the beginning of the fiscal year. The report of the audit must be made available for public inspection. A copy of the report of audit must be submitted to the Comptroller General no later than January first each year following the close of the books of the previous fiscal year.**
>
> **If the report is not timely filed, or within the time extended for filing the report, funds distributed by the Comptroller General to the county in the current fiscal year must be withheld pending receipt of a copy of the report.**

HISTORY: 1962 Code § 14-3712; 1975 (59) 692; 1977 Act No. 96; 1988 Act No. 365, Part II, § 3.; 2002 Act No. 356; 2005 Act No. 164.

Cross references --

Audit of drug forfeiture proceeds, see § 44-53-530(j).
Audit of ordinance summonses, see § 56-7-80.
Audit must include a supplemental schedule regarding victim service funds, see §§ 14-1-206(E) and 14-1-205(E).

CASE NOTES

The Judicial Department does not have the authority or responsibility to supervise a master-in-equity's bank accounts and audit books, as that authority rests solely with the county. The auditing duty is placed on the county by § 4-9-150. Bank of New York v. Sumter County, 387 S.C. 147, 691 S.E.2d 473 (2010).

The clerk of court sought to prevent a special audit of the clerk of court's office authorized by county council. The clerk argued that the special audit ordered by the county council was invalid because the county council did not articulate specific reasons why such an audit was necessary. Special audits may be provided for any agency receiving county funds as the county governing body considers necessary. The grounds laid out in the county council's resolution authorizing the special audit of the clerk of court's office constitute the functional equivalent of articulating necessity. Brown v. County of Berkeley, 366 S.C. 354, 622 S.E. 2d 533 (2006).

ATTORNEY GENERAL'S OPINIONS

Counties are required to submit an annual audit report to the comptroller general no later than January first each year following the close of the books of the previous year. If the report is not timely filed, or within the time extended for filing the report, funds distributed by the comptroller general to the county in the current fiscal year must be withheld pending receipt of a copy of the report. Based on a plain reading of §4-9-150, the legislature did not authorize the comptroller general to halt distribution of funds paid to counties by other agencies, including the Department of Revenue (DOR). No other provision in the code authorizes the DOR to halt such distributions due to a county's failure to file an annual report. Op. Atty. Gen., dated June 20, 2007.

Where an internal auditor is subject to the personnel rules of the county, the appointment and supervisory authority over that individual rests with the county administrator, not with county council. Unpublished Op. Atty. Gen., dated September 24, 1996.

[Section 4-9-150, 1976 Code] requires a complete audit of an agency funded in whole or in part by county funds. 1976-77 Op. Atty. Gen., No. 77-141.

SECTION 4-9-160: Centralized Purchasing Systems Required

EDITOR'S NOTE: This section is self-explanatory.

§ 4-9-160. Council shall provide for centralized purchasing system.

> **The council shall provide for a centralized purchasing system for procurement of goods and services required by the county government.**

HISTORY: 1962 Code § 14-3713; 1975 (59) 692.

Cross Reference --
Requirement that a competitive procurement process be used, see § 11-35-50.

CASE NOTES

The requirement that a competitive procurement process be used is for the benefit of those having a direct, intrinsic interest in the procurement practices of governmental entities. No implied right of private action accrues to the general public under § 11-35-50. Citizens for Lee County v. Lee County, 308 S.C. 23, 416 S.E.2d 641 (1992).

ATTORNEY GENERAL'S OPINIONS

While South Carolina law requires the governing bodies of the counties to provide for centralized purchasing system for procurement of goods and services, the county can legally enact an ordinance authorizing the use of purchasing cards to allow the county to acquire goods and services that do not need to be procured competitively. Op. Atty. Gen., dated January 2, 2001.

The office of the Clerk of Court falls within the phrase "county government" as used in § 4-9-160. Thus the Clerk of Court should follow the procurement policies or regulations in the expenditure of IV-D funds for child support enforcement. Unpublished Op. Atty. Gen., dated June 9, 1995.

A county governing body cannot alter duties of the treasurer. Any duplication of duties by the treasurer and finance department may be eliminated by providing that the treasurer's office performs such duties. Duties assigned to the treasurer cannot be removed from that office. 1984 Op. Atty. Gen., No. 84-15.

The Home Rule Act contemplates that the method used to achieve centralization of purchasing may

vary from county to county. 1974-75 Op. Atty. Gen., No. 4198.

SECTION 4-9-170: Appointive Powers of Council for Boards, Etc.

EDITOR'S NOTE: County council has the power to appoint members of all county boards, commissions, etc., with the exception of school districts, special purpose districts and other political subdivisions created by the General Assembly.

§ 4-9-170. Council shall provide for appointment of certain boards, committees, and commissions; appointive powers of council.

> **The council shall provide by ordinance for the appointment of all county boards, committees and commissions whose appointment is not provided for by the general law or the Constitution.**
>
> **Each council shall have such appointive powers with regard to existing boards and commissions as may be authorized by the General Assembly except as otherwise provided for by the general law and the Constitution, but this authority shall not extend to school districts, special purpose districts or other political subdivisions created by the General Assembly; provided, however, that beginning January 1, 1980, the council shall provide by ordinance for the appointment of all county boards, committees and commissions whose appointment is not provided for by the general law or the Constitution, but this authority shall not extend to school districts, special purpose districts or other political subdivisions created by the General Assembly.**

HISTORY: 1962 Code § 14-3714; 1975 (59) 692.

CASE NOTES

Home rule legislation cannot give county government more power over a pre-Home Rule district than it is given in the original act creating the district. Thomas v. Cooper River Park, 322 S.C. 32, 471 S.E.2d 170 (1996).

In order to provide for an orderly transition to county home rule, the legislature may properly exercise its authority under § 4-9-170, 1976 Code to appoint until January 1, 1980, all county boards, committees, and commissioners. Duncan v. County of York, 267 S.C. 327, 228 S.E.2d 92 (1976).

ATTORNEY GENERAL'S OPINIONS

The authority to recommend persons for appointment to the boards of technical colleges was not transferred from the county legislative delegation to the respective county council by the codification of §4-9-170. Section 4-9-170 authorizes counties to provide by ordinance for the appointment of all county boards, committees, and commissions whose appointment is not provided for by general law or the constitution. The state's courts have previously determined that §4-9-170 did not alter the method for appointing technical college boards, and that the General Assembly was free to continue to enact local legislation regarding school matters. Consequently, the county legislative delegation currently holds the authority to make recommendations to the governor for appointments to the technical college boards. Op. Atty. Gen., dated December 8, 2008.

It is generally held that the determination of the qualifications or disqualifications for an office are a matter for the determination of the appointing authority. As stated by the court In the Matter of Needleman v. County of Rockland, 704 N.Y. S. 2d 887 (N.Y. 2000), "the Courts will not interfere with the discretion of the appointing authority to determine the qualifications of candidates unless the determination warrants judicial intervention on the ground that it is irrational and arbitrary." Consistent with such, the provision establishing a restriction for membership on the Planning Commission to individuals residing in unincorporated areas or incorporated areas without a Planning Commission would be upheld as a proper determination by the county council of qualifications for that position. Op. Atty. Gen., dated January 20, 2004.

If a commission is created by an ordinance, and not by general law or the constitution of South Carolina, county council is the appropriate body to appoint members to that commission. Unpublished Op. Atty. Gen., dated July 17, 1997.

Pursuant to Section 3 of Act No. 283 of 1975, "all operations, agencies and offices of county government, appropriations and laws related thereto in effect on the date the change in form becomes effective shall remain in full force and effect until otherwise implemented by ordinance of the council," and county council has the necessary authority to modify, by ordinance, an act that is purely local in nature that concerns the forfeited land commission and may follow general law as it regards that commission. Unpublished Op. Atty. Gen., August 7, 1995.

A county council would not have authority to appoint the governing body of a council on aging (an eleemosynary corporation) or a mental retardation board (created by general law). Unpublished Op. Atty. Gen., dated January 6, 1989.

In the case of a special purpose district (SPD), neither the county nor the city may, by contract, ordinance, or agreement, alter the appointment procedures for the SPD governing board. 1985 Op. Atty. Gen., No. 85-36.

[Section 4-9-170, 1976 Code] provides that county councils shall have such appointive powers as authorized by the General Assembly as to existing county boards and commissions; otherwise, the appointive powers are to remain as they have until January 1, 1980. 1976-77 Op. Atty. Gen., No. 77-28.

SECTION 4-9-175: Local Board and Commission Member Per Diem and Travel Expense

EDITOR'S NOTE: This section is self-explanatory.

§ 4-9-175. Per diem, travel, and other expenses authorized for travel by board or commission members outside county.

> **The governing body of a county may pay per diem, travel, or any other expenses, in an amount it considers necessary, to any member of a county board or commission when the member travels outside of the county and incurs expenses relating to his duties while serving on the board.**

HISTORY: 1993 Act No. 147.

ATTORNEY GENERAL'S OPINIONS

It is generally held that the determination of the qualifications or disqualifications for an office are a matter for the determination of the appointing authority. As stated by the court In the Matter of Needleman v. County of Rockland, 704 N.Y. S. 2d 887 (N.Y. 2000), "the Courts will not interfere with the discretion of the appointing authority to determine the qualifications of candidates unless the determination warrants judicial intervention on the ground that it is irrational and arbitrary." Consistent with such, the provision establishing a restriction for membership on the Planning Commission to individuals residing in unincorporated areas or incorporated areas without a Planning Commission would be upheld as a proper determination by the county council of qualifications for that position. Op. Atty. Gen., dated January 20, 2004.

There is no general statutory provision relating to the compensation of members of County Boards of Assessment Appeals. Similarly there is no general statutory provision that would allow a county governing body to pay per diem to a member of such a board when that member travels outside the county and incurs expenses. 1993 Op. Atty. Gen., No. 93-26. *Ed. Note – This opinion was issued prior to the passage of § 4-9-175.*

SECTION 4-9-180: Conflicts of Interest

EDITOR'S NOTE: This section may have been implicitly repealed to the extent that it conflicts with the Ethics, Government Accountability, and Campaign Reform Act of 1991. In order to learn all of the ethical rules of conduct that apply to county officials and employees it is important to consult that act, which begins at § 8-13-100.

§ 4-9-180. Officers and employees shall disclose personal interests in county business and refrain from voting on or participating in such matters.

> **Any county officer or employee who has a substantial financial interest in any business which contracts with the county for sale or lease of land, materials, supplies, equipment or services or who personally engages in such matters shall make known that interest and refrain from voting upon or otherwise participating in his capacity as a county officer or employee in matters related thereto.**
>
> **Any county officer or employee who wilfully violates the requirements of this section shall be deemed guilty of malfeasance in office and upon conviction shall forfeit his office or position. Violation of this section with the knowledge express or implied of the person or corporation contracting with or making a sale to the county shall render the contract or sale voidable by the county governing body.**

HISTORY: 1962 Code § 14-3715; 1975 (59) 692.

Cross references —

Statutory rules of ethical conduct, see the Ethics, Government Accountability, and Campaign Reform Act of 1991; § 8-13-100, et seq.

Research and Practice References --

63A Am. Jur. 2d Public Officers and Employees §§ 338, 341.
67 C.J.S. Officers § 204.

SECTION 4-9-190: Article I Inapplicable to Board of Commissioners Form of Government

EDITOR'S NOTE: Section 4-9-190 has been deleted in this handbook, because that form of government was held unconstitutional by the South Carolina Supreme Court. This statute still appears in the Code of Laws.

SECTION 4-9-195: Special Tax Assessments for Rehabilitated Historic Properties and Low and Moderate Income Rental Property

EDITOR'S NOTE: This section allows the governing body of a county to use a special property tax assessment to encourage the restoration or improvement of historical property or rental property for low or moderate income tenants. Because this code section is technical in nature and logically belongs in Title 12 with other technical aspects of the property tax, it has been deleted from this text. The statute is printed in full in the Code of Laws.

Act No. 182 of 2010 amended § 4-9-195(E), which relates to the grant of special property tax assessments to "rehabilitated historic property" or "low and moderate income rental property," to delete the disqualification of property from receiving the special assessment if it is sold or if ownership is transferred.

§ 4-9-195. Grant of special property tax assessments to "rehabilitated historic property" or "low and moderate income rental property."

(A) The governing body of any county by ordinance may grant the special property tax assessments authorized by this section to real property which qualifies as either "rehabilitated historic property" or as "low and moderate income rental property" in the manner provided in this section. A county governing body may designate, in its discretion, an agency or a department to perform its functions and duties pursuant to the provisions of this section in its discretion.

(1) All qualifying property may receive preliminary certification from the county governing body and upon this preliminary certification, the property must be assessed for two years on the fair market value of the property at the time the preliminary certification was made. If the project is not complete after two years, but the minimum expenditures for rehabilitation have been incurred, the property continues to receive the special assessment until the project is completed.

(2) Upon completion of a project, the project must receive final certification from the county governing body in order to be eligible for the special assessment. Upon final certification, the property must be assessed for the remainder of the special assessment period on the fair market value of the property at the time the preliminary certification was made or the final certification was made, whichever occurred earlier. If a completed project does not comply with all requirements for final certification, final certification must not be granted and any monies

not collected by the county due to the special assessment must be returned to the county.

(3) The special assessment only begins in the current or future tax years as provided for in this section. In no instance may the special assessment be applied retroactively.

(B) As used in this section:

(1) "Historic designation" means the owner of the property applies for and is granted historic designation by the county governing body for the purpose of the special property tax assessment based on one or more of the following reasons:

(a) the property is listed in the National Register of Historic Places;

(b) the property is designated as a historic property by the county governing body based upon criteria established by the county governing body and is at least fifty years old; or

(c) the property is at least fifty years old and is located in a historic district designated by the county governing body at any location within the geographical area of the county.

(2) "Approval of rehabilitation work" means the proposed and completed rehabilitation work is approved by the reviewing authority as appropriate for the historic building and the historic district in which it is located.

(3) "Minimum expenditures for rehabilitation" means the owner or his estate rehabilitates the building, with expenditures for rehabilitation exceeding the minimum percentage of the fair market value of the building established by the county in its ordinance. The county governing body may set different minimum percentages for owner-occupied property and income producing real property, between twenty percent and one hundred percent.

(4) "Special assessment period" means the county governing body shall set the length of the special assessment in its ordinance of not more than twenty years.

(5) "Preliminary certification" means a property has met the following conditions:

(a) the owner of the property applies for and is granted historic designation by the county governing body; and

(b) the proposed rehabilitation receives approval of rehabilitation work from the reviewing authority.

A county governing body may require that an owner applies for preliminary certification before any project work begins.

(6) "Final certification" means a property has met the following conditions:

(a) the owner of the property applies for and is granted historic designation by the county governing body;

(b) the completed rehabilitation receives approval of rehabilitation work from the reviewing authority; and

(c) the minimum expenditures for rehabilitation were incurred and paid.

(7) "Reviewing authority" for approval of rehabilitation work pursuant to this section is defined as:

(a) the board of architectural review in counties with a board of architectural review with jurisdiction over historic properties operating pursuant to Section 6-29-870;

(b) in counties without a board of architectural review with jurisdiction over historic properties, the county governing body may designate another qualified entity with historic preservation expertise to review the rehabilitation work; or

(c) if the county governing body does not designate another qualified entity, the Department of Archives and History shall review the rehabilitation work. No separate application to the department is required for properties receiving preliminary and final approval for the federal income tax credit allowed pursuant to Section 47 of the Internal Revenue Code or the state income tax credit allowed pursuant to Section 12-6-3535.

(8) "Rehabilitated historic property" means the property has met all the criteria for final certification.

(C) "Low and moderate income rental property" is eligible for certification if:

(1) the property provides accommodations under the Section 8 Program as defined in the United States Housing Act of 1937 and amended by the Housing and Community Act of 1974 for low and moderate income families and persons as defined by Section 31-13-170(p); or

(2) in the case of income-producing real property, the expenditures for rehabilitation exceed the appraised value of the property; and

(3) if the low and moderate income housing rehabilitation is located in

an area designated by the local government as a Low and Moderate Housing Rehabilitation District; and

(4) the owner or estate of any property certified as "low and moderate income rental property" takes no actions which cause the property to be unsuitable for such a designation. The county governing body granting the initial certification has the authority to decertify property in these cases, and the property becomes immediately ineligible for the special tax assessments provided for this type of property; and

(5) if the property qualifies as "historic" as defined in subsection (B)(1), then the rehabilitation work must be approved by the appropriate reviewing authority as provided in subsections (B) and (D).

(D) The Department of Archives and History may provide training and technical assistance to counties and procedures for application, consideration, and appeal through appropriate regulations for "rehabilitated historic property" provisions of the law. The governing body may establish fees for applications for preliminary or final certification, or both, through the ordinance or regulations.

(E) When property has received final certification and is assessed as rehabilitated historic property, or low or moderate income rental property, it remains so certified and must be granted the special assessment until the property becomes disqualified by any one of the following:

(1) written notice by the owner to the county to remove the preferential assessment;

(2) removal of the historic designation by the county governing body;

(3) decertification of the property by the local governing body as low or moderate income rental property for persons and families of moderate to low income as defined by Section 31-13-170(p);

(4) rescission of the approval of rehabilitation work by the reviewing authority because of alterations or renovations by the owner or his estate which cause the property to no longer possess the qualities and features which made it eligible for final certification.

Under no circumstances shall the sale or transfer of ownership of real property certified and assessed in accordance with this section and any ordinance in effect at the time disqualify the property from receiving the special property tax assessment under this section. This provision shall be applicable and given full force and effect to any special property tax assessment granted prior to the effective date of this paragraph notwithstanding any ordinance in effect from time to time to the contrary.

Notification of any change affecting eligibility must be given immediately to the appropriate county taxing and assessing authorities.

(F) If an application for preliminary or final certification is filed by May first or the preliminary or final certification is approved by August first, the special assessment authorized by this section is effective for that year. Otherwise it is effective beginning with the following year.

(G) Once the governing body has granted the special property tax assessments authorized by this section, the owner of the property shall make application to the auditor for the special assessment provided for by this section.

(H) A property certified to receive the special property tax assessment under the existing law continues to receive the special assessment in effect at the time certification was made.

HISTORY: 1990 Act No. 474, § 1; 1992 Act No. 375,§§ 1-4; 2004 Act No. 292, § 1; 2010 Act No. 182, § 5.

Cross references–

Powers conferred upon county governing bodies by this section also conferred upon municipal governing bodies; § 5-21-140.

Department of Archives and History; §§ 60-11-20 et seq. S.C. Code of Regulations; R. 12-120 et seq.

ARTICLE 13: INITIATIVE AND REFERENDUM

SECTION 4-9-1210: Referendum Initiated by the Public

EDITOR'S NOTE: Qualified electors in the county can propose ordinances by petition, with the exception of ordinances that deal with taxation or spending. This section provides the procedure. See § 4-9-1230, below, for the procedure if council fails to pass an ordinance proposed by the electorate.

§ 4-9-1210. Electors may propose and adopt or reject certain ordinances; submission by petition to council.

The qualified electors of any county may propose any ordinance, except an ordinance appropriating money or authorizing the levy of taxes, and adopt or reject such ordinance at the polls. Any initiated ordinance may be submitted to the council by a petition signed by qualified electors of the county equal in number to at least fifteen percent of the qualified electors of the county.

HISTORY: 1962 Code § 14-3790; 1975 (59) 692; 1977 Act No. 33, § 1.

Cross references --

Municipal initiative and referendum procedure, see §§ 5-17-10 to 5-17-30.

Research and Practice references --

42 Am. Jur. 2d Initiative and Referendum § 1-20.

20 C.J.S. Counties § 92.

CASE NOTES

Zoning provisions cannot be enacted by initiative and referendum. The conflict between a relatively free-ranging initiative and referendum process and a more recent, elaborate and detailed zoning procedures are incompatible and hopelessly inconsistent, and allowing zoning by initiative and referendum potentially would nullify zoning and land use rules developed after extensive debate among a variety of interested persons. I'ON, L.L.C., v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000).

A spending limitation ordinance cannot be lawfully proposed through the initiative and referendum method set forth in Section 4-9-1210. In limiting all county appropriations, the proposed ordinance clearly restricts county council's authority over the treasury and, thus, defeats the plain legislative intent of Section 4-9-1210. Focus on Beaufort County v. Beaufort County, 318 S.C. 227, 456 S.E.2d 910 (1995).

Administrative measures are not proper matters for an initiated ordinance. An administrative measure is an enactment that puts into execution previously declared policies or previously enacted laws. Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E.2d 801 (1992). *Ed. Note – This case interprets the municipal initiative petition process in § 5-17-10, et seq., which is similar, but not identical to, the county initiative and referendum statutes.*

The electorate has no greater power to legislate than the council. An initiated ordinance that is facially defective cannot be cured by adoption by the electorate. Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E.2d 801 (1992). *Ed. Note – This case interprets the municipal initiative petition process in § 5-17-10, et seq., which is similar, but not identical to the county initiative and referendum statutes.*

An ordinance adopted through the process set forth in § 4-9-1210, et seq. is subject to challenge under the contract clause of the U.S. Constitution. Citizens for Lee County v. Lee County, 308 S.C. 23, 416 S.E.2d 641 (1992).

ATTORNEY GENERAL'S OPINIONS

Section 4-9-1210 prohibits voters from increasing taxes by referendum, therefore an increase in property taxes is solely within the authority of county council. An initiative petition may not be proposed to increase taxes to fund the county library system. Op. Atty. Gen., dated May 6, 2011.

Although § 4-9-1210 prohibits a spending limitation through the initiative and referendum method, it is unclear how the court would find an ordinance proposed by initiative petition that seeks to reduce road maintenance fees. The Attorney General's office has said that the legislative intent could be construed so as to allow the public to reduce a fee through this section because the statutory language is silent concerning fees. The opinion, however, relies heavily on the S.C. Supreme Court's opinion in Focus v. Beaufort County, which said that any ordinance restricting a county's control over its own treasury would violate § 4-9-1210. The opinion holds that a reduction of a road maintenance fee would decrease revenues going into the county treasury thus diminishing that county's control over its treasury, which would violate this section. Op. Atty. Gen., dated March 1, 2011.

Because a county council probably does not have the authority to enact an ordinance to provide for term limitations or recall of elected officials, an ordinance to do the same proposed by the electorate would most probably be facially defective. 1993 Op. Atty. Gen., No. 93-45.

A petition submitted to a county council pursuant to § 4-9-1210 of the code to initiate the initiative and referendum process must set forth the proposed ordinance within the petition. 1989 Op. Atty. Gen., No. 89-143.

The qualified electors of a county have no authority under the Home Rule Act to remove a member of the governing body of the county from office through the enactment of an ordinance by initiative and referendum. 1974-75 Op. Atty. Gen., No. 4104.

SECTION 4-9-1220: Elector Petitions for Repeal of Ordinances

EDITOR'S NOTE: Electors may, by petition, force a referendum within sixty days after the passage by county council of an ordinance approving general obligation bonds or similar forms of financing.

§ 4-9-1220. Electors may petition for repeal of certain ordinances.

> **Within sixty days after the enactment by the council of any ordinance authorizing the issuance of bonds, notes or other evidence of debt the repayment**

of which requires a pledge of the full faith and credit of the county, or requires the approval of the issuance of bonds by a public service district within the county a petition signed by qualified electors of the county equal in number to at least fifteen percent of the qualified electors of the county, or if such ordinance relates to a bond issue for a public service district, fifteen percent of the qualified electors of the district may be filed with the clerk of the county council requesting that any such ordinance be repealed; provided, however, that this section shall not apply to bond issues approved by referendum or to notes issued in anticipation of taxes.

HISTORY: 1962 Code § 14-3791; 1975 (59) 692; 1977 Act No. 33 § 1.

Research and Practice References --
42 Am. Jur. 2d Initiative and Referendum § 21, et seq.

CASE NOTE

An ordinance that repeals a voter initiated ordinance does not need to be submitted to the electorate for approval. Townsend v. City of Dillon, 326 S.C. 244, 486 S.E.2d 95 (1997).

ATTORNEY GENERAL'S OPINIONS

Section 4-9-1220 may only be used to repeal ordinances by referendum that relate to the types of indebtedness that require the full faith and credit of the county, such as bonds and notes, and not as a mechanism to repeal an ordinance imposing a hospitality fee. Unpublished Op. Atty. Gen., dated February 4, 1997.

Section 4-9-1220 would not be applicable for the repeal of an ordinance requiring full faith and credit of the county to be pledged for repayment. Section 4-9-1220 is the specific mechanism provided for the repeal of ordinances and therefore § 4-9-1210 could not be used for the repeal of ordinances adopted by a county. Unpublished Op. Atty. Gen., dated August 14, 1995.

A county ordinance that authorizes a bond issue for a special purpose district may be challenged under § 6-11-880 or repealed under § 4-9-1220. 1981 Op. Atty. Gen., No. 81-79.

SECTION 4-9-1230: Election Required When Council Fails to Act

EDITOR'S NOTE: Section 4-9-1210, above, provides that 15% of the electorate can propose an ordinance. If county council fails or refuses to pass an ordinance substantially the same as proposed, council must provide for a referendum within a given time frame for the electorate to approve or reject the proposed ordinance.

§ 4-9-1230. Election shall be held where council fails to adopt or repeal ordinance.

> **If the council shall fail to pass an ordinance proposed by initiative petition or shall pass it in a form substantially different from that set forth in the petition therefor or if the council shall fail to repeal an ordinance for which a petition for repeal has been presented, the adoption or repeal of the ordinance concerned shall be submitted to the electors not less than thirty days nor more than one year from the date the council takes its final vote thereon. The council may, in its discretion, and if no regular election is to be held within such period, provide for a special election. All county councils shall be bound by the results of any such referendum.**

HISTORY: 1962 Code § 14-3792; 1975 (59) 692; 1977 Act No. 33,§ 1.

Research and Practice References --
42 Am. Jur. 2d Initiative and Referendum §§ 41-46.

CASE NOTE

Council has no duty to submit a facially invalid initiative ordinance to the electorate. However, council has no authority to pass judgment on a proposed initiated ordinance. The proper mechanism by which a council shall determine if an initiated ordinance is invalid is by a declaratory judgment action. Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E.2d 801 (1992). *Ed. Note – This case interprets the municipal initiative petition process in § 5-17-10, et seq., which is similar, but not identical to the county initiative and referendum procedures.*

PART II

PROVISIONS THAT APPLY TO INDIVIDUAL FORMS OF GOVERNMENT

ARTICLE 3: COUNCIL FORM OF COUNTY GOVERNMENT

SECTION 4-9-310: County Council Responsibilities

EDITOR'S NOTE: This section is self-explanatory.

§ 4-9-310: Responsibility for policy making and administration; membership of council; applicability of Article 1.

> **In those counties adopting the council form of government provided for in this article, the responsibility for policy making and administration of county government shall be vested in the county council which shall consist of not less than three nor more than twelve members who are qualified electors of the county. The structure, organization, powers, duties, functions and responsibilities of county government under the council form shall be as prescribed in Article 1 of this chapter.**

HISTORY: 1962 Code § 14-3720; 1975 (59) 692.

ARTICLE 5: COUNCIL-SUPERVISOR FORM OF GOVERNMENT

SECTION 4-9-410: County Council Organizational Requirements

EDITOR'S NOTE: This section describes the size of council under the supervisor form of government, requires that the supervisor be a qualified voter of the county, and restricts the supervisor's voting to tie breaking votes. The last paragraph, which prohibits salary changes during the elected term of the supervisor, is in direct conflict with § 4-9-100. An Attorney General's opinion has taken the position that § 4-9-100, allowing such changes, is the current law.

§ 4-9-410. Membership of council; election, term, and compensation of supervisor.

> **The council in those counties adopting the council-supervisor form of government provided for in this article shall consist of not less than two nor more than twelve members who are qualified electors of the county. The supervisor shall serve as chairman and vote only to break tie votes. The supervisor shall be a qualified elector of the county, elected at large from the county in the general election for a term of two or four years.**
>
> **The compensation for the supervisor shall be prescribed by the council by ordinance. The council shall not reduce or increase the compensation of the supervisor during the term of office for which he was elected.**

HISTORY: 1962 Code § 14-3730; 1975 (59) 692.

ATTORNEY GENERAL'S OPINIONS

A supervisor, under the county-supervisor form of government, is an elected official. Accordingly, the supervisor would not fall under the personnel policies of 4-9-30(7). Op. Atty. Gen., dated April 2, 2013.

If the voters of a county were to approve a change in the county's form of government and therefore abandon the council-supervisor form, the council-supervisor elected during the same general election in November would serve the full term. A referendum that would shorten the supervisor's term to one year would be prohibited by 4-9-410. Unpublished Op. Atty. Gen., dated February 20, 1998.

The provisions of § 4-9-100, permitting a salary increase during the supervisor's term of office, would prevail over the conflicting provisions of § 4-9-410 of the code. Based on the foregoing, it is the opinion of this Office that the salary of county supervisor may be increased during his term of office. 1987 Op. Atty. Gen., No. 87-7.

Because the county supervisor is directly elected by the people, the county's personnel system policies and procedures are inapplicable to the supervisor. 1987 Op. Atty. Gen., No. 87-27.

The commencement of the term of office for a county supervisor is January second next following his election. 1987 Op. Atty. Gen., No. 87-27.

If a county selects the council-supervisor form of county government provided for in [Article 5 of Chapter 9 of Title 4 of the 1976 Code], the supervisor will serve as chairman of the council pursuant to [§ 4-9-410, 1976 Code], but will not be elected to that position by virtue [§ 4-9-90, 1976 Code]. 1974-75 Op. Atty. Gen., No. 4167.

SECTION 4-9-420: Powers and Duties of the Supervisor

EDITOR'S NOTE: This section is self-explanatory.

§ 4-9-420. Powers and duties of supervisor.

The powers and duties of the supervisor shall include, but not be limited to, the following:

(1) to serve as the chief administrative officer of the county government;

(2) to execute the policies and legislative actions of the council;

(3) to direct and coordinate operational agencies and administrative activities of the county government;

(4) to prepare annual operating and capital improvement budgets for submission to the council;

(5) to supervise the expenditure of funds appropriated by council;

(6) to prepare annual, monthly and other reports for council on finances and administrative activities of the county;

(7) to recommend measures for adoption;

(8) to serve as presiding officer of the council, voting in case of council ties;

(9) to serve as official spokesman for the council with respect to council's policies and programs;

(10) to inspect books, accounts, records, or documents pertaining to the property, money or assets of the county;

(11) to be responsible for the administration of county personnel policies approved by the council including salary and classification plans;

(12) to be responsible for employment and discharge of personnel subject to the provisions of subsection (7) of § 4-9-30 and subject to the appropriation of funds by the council for that purpose.

HISTORY: 1962 Code § 14-3731; 1975 (59) 692.

CASE NOTES

Item (12) gives county supervisor general power to employ and discharge county personnel coming within the jurisdiction of county council, but such power to employ personnel is limited, first, by the existence of a position to fill and, second, by the appropriation of funds with which to pay the employee. Poore v. Gerrard, 271 S.C. 1, 244 S.E.2d 510 (1978).

General power to appoint and discharge a county attorney under the council-supervisor form of county government rests with the county supervisor. Poore v. Gerrard, 271 S.C. 1, 244 S.E.2d 510 (1978).

ATTORNEY GENERAL'S OPINION

As county council possesses the power to develop personnel system policies and procedures for county employees, the power to regulate the hours during which county offices are open for business appears inherent. If county council acts legislatively in this regard, then the county supervisor, pursuant to his duty to execute the policies and legislative actions of council, must act accordingly. In the absence of county council action, the county supervisor, as chief administrative officer of the county and possessing the power to direct and coordinate operational agencies of the county may be authorized to regulate the hours of operation of county departments. Unpublished Op. Atty. Gen., dated September 30, 1999.

SECTION 4-9-430: Supervisor's Authority and County Officials

EDITOR'S NOTE: This section restricts the authority of county council to deal directly with county employees and of the supervisor to deal with elected county officials.

§ 4-9-430. Powers of council and its members; authority of supervisor over certain elected officials.

> **The council shall not remove any county administrative officers or employees whom the county supervisor or any of his subordinates are empowered to appoint, unless by two-thirds vote of the members present and voting.**
>
> **Except for the purpose of inquiries and official investigations, neither the council nor its members shall give direct orders to any county officer or employee, either publicly or privately.**
>
> **With the exception of organizational policies established by the governing body,**

the county supervisor shall exercise no authority over any elected officials of the county whose offices were created either by the Constitution or by general law of the State.

HISTORY: 1962 Code § 14-3732; 1975 (59) 692.

CASE NOTES

While county council could discharge a county attorney appointed by the county supervisor by a two-thirds vote, an attempt to discharge the county attorney by a vote other than a two-thirds vote was ineffective. Poore v. Gerrard, 271 S.C. 1, 244 S.E.2d 510 (1978).

General power to appoint and discharge a county attorney under the council-supervisor form of county government rests with the county supervisor. Poore v. Gerrard, 271 S.C. 1, 244 S.E.2d 510 (1978).

SECTION 4-9-440: Applicability of Article 1

EDITOR'S NOTE: This section incorporates the provisions of Article 1 into the council-supervisor form of government.

§ 4-9-440. Applicability of Article 1.

Except as specifically provided for in this article, the structure, organization, powers, duties, functions, and responsibilities of county government under the council-supervisor form shall be as prescribed in Article 1 of this chapter.

HISTORY: 1962 Code § 14-3733; 1975 (59) 692.

ARTICLE 7: COUNCIL-ADMINISTRATOR FORM OF GOVERNMENT

SECTION 4-9-610: County Council Organizational Requirements

EDITOR'S NOTE: This section is self-explanatory.

§ 4-9-610. Membership of council; election and term of members.

The council in those counties adopting the council-administrator form of government provided for in this article shall consist of not less than three nor

more than twelve members who are qualified electors of the county. Council members shall be elected in the general election for terms of two or four years commencing on the first of January next following their election.

HISTORY: 1962 Code § 14-3740; 1975 (59) 692.

CASE NOTES

In a council-administrator form of government, the council is elected by the county's citizens and the council employs an administrator who serves as the administrative head of county government and is responsible for the administration of all departments over which the council has control. County administrator's duty to deliver county's financial documents to a county council member was quasi-judicial duty that required the exercise of discretion in determining how the act of delivering such documents should be done. Mandamus relief was not available to compel the administrator to deliver documents to a council member in a particular manner or within a particular time frame. Wilson v. Preston, 378 S.C. 348, 662 S.E.2d 580 (2008).

Statute establishing voting qualifications, prerequisites to voting, or standards, practices or procedures with respect to voting, different from those in force or effect in county on November 1, 1964 with respect to election of members of the county council and its separately elected chairman was subject to the preclearance requirements of § 5 of the Voting Rights Act of 1965, as amended, 42 USCS § 1973c. Horry County v. United States, 449 F. Supp. 990 (D.S.C. 1978).

Former district residency requirements for candidates for the county council remained in effect, despite challenge that they were contrary to the provisions of the Home Rule Act, due to the county's failure to hold a timely referendum. Infinger v. Edwards, 268 S.C. 375, 234 S.E.2d 214 (1977).

ATTORNEY GENERAL'S OPINIONS

It goes without saying that members of county council do not work for the county administrator. On the contrary, under Section 4-9-610 et seq., the county administrator is employed by and serves at the pleasure of county council. Unpublished Op. Atty. Gen., dated February 17, 1999.

In counties having a council-administrator form of government, the county council must approve a re-organizational change before it may be implemented. 1982 Op. Atty. Gen., No. 82-57.

Section 4-9-130 requires fifteen days notice to be given before public hearings on certain actions that are specifically enumerated within that section. There is no specific time requirement for notice to be given prior to a public hearing on the removal of an administrator. Section 4-9-620 requires the public hearing on the removal of the administrator to be held at a public meeting of county

council. There is no statute requiring the council to wait until the meeting after a public hearing to vote on the removal of the administrator. Unpublished Op. Atty. Gen., dated March 29, 1979.

The chairman of the council-administrator form of county government may not be given additional duties that conflict with duties of other county officials. 1976-77 Op. Atty. Gen., No. 77-50.

Under the council-administrator form of government, the chairman is selected by the council and his salary is set by the council. 1976-77 Op. Atty. Gen., No. 77-97.

SECTION 4-9-620: Employment and Removal of Administrators

EDITOR'S NOTE: This section is self-explanatory.

§ 4-9-620. Employment and qualifications of administrator; compensation; term of employment; procedure for removal.

> **The council shall employ an administrator who shall be the administrative head of the county government and shall be responsible for the administration of all the departments of the county government which the council has the authority to control. He shall be employed with regard to his executive and administrative qualifications only, and need not be a resident of the county at the time of his employment. The term of employment of the administrator shall be at the pleasure of the council and he shall be entitled to such compensation for his services as the council may determine. The council may, in its discretion, employ the administrator for a definite term. If the council determines to remove the county administrator, he shall be given a written statement of the reasons alleged for the proposed removal and the right to a hearing thereon at a public meeting of the council. Within five days after the notice of removal is delivered to the administrator he may file with the council a written request for a public hearing. This hearing shall be held at a council meeting not earlier than twenty days nor later than thirty days after the request is filed. The administrator may file with the council a written reply not later than five days before the hearing. The removal shall be stayed pending the decision at the public hearing**.

HISTORY: 1962 Code § 14-3741; 1975 (59) 692.

Cross References –
Employee handbook not a contract, § 41-1-110

CASE NOTES

Section 4-9-620 authorizes council to employ an administrator "for a definite term." However, South Carolina case law *limits* the ability of a council to enter into an employment contract that would bind successor councils. Cunningham v. Anderson, 402 S.C. 434, 741 S.E.2d 545 (2013).

A county administrator acted within his authority in terminating tax assessor for insubordination based on her refusal to withdraw her appeal from assessment decision of county board of assessment appeals. Her termination did not fall within public policy exception to rule that at-will employee may be terminated at any time for any reason or for no reason. Even though the statute gave tax assessor the right to appeal any modification or disapproval of any appraisal made, she was not required to do so, none of the statutes gave tax assessor the sole discretion to determine which cases to appeal, and tax assessor, who served by appointment, was subject to discharge by administrator or county council. Antley v. Shepherd, 340 S.C. 541, 532 S.E.2d 294 (Ct. App. 2000), aff'd as modified 564 S.E.2d 116 (2002).

Failure to comply with the statutory removal procedure by not supplying specific reasons for removal or not providing a meaningful public hearing are proper grounds for a wrongful discharge suit. A public officer discharged unlawfully is entitled to all wages without offset. Drawdy v. Town of Port Royal, 302 S.C. 125, 397 S.E.2d 98 (Ct. App. 1990). *Ed. Note – Interpreting § 5-13-70, a parallel provision for municipal managers.*

ATTORNEY GENERAL'S OPINIONS

Under the provisions of §4-9-620, county administrators shall be the administrative head of the county government and shall be responsible for the administration of all departments of the county government that the council has the authority to control. Under a council-administrator form of government, council must go through the county administrator with regard to matters of county personnel, including internal auditors. Op. Atty. Gen., dated April 4, 2008.

The administrator in a council-administrator form of government is responsible only for the administration of those departments that the council has the authority to control. The appointment authority for the County Board of Elections and Registration and the County Veterans Affairs Director is the legislative delegation and not the county council. The county administrator would have no authority over these departments or offices. Op. Atty. Gen., dated September 6, 2005.

SECTION 4-9-630: Powers and Duties of Administrator

EDITOR'S NOTE: This section is self-explanatory.

§ 4-9-630. Powers and duties of administrator.

The powers and duties of the administrator shall include, but not be limited to, the following:

(1) to serve as the chief administrative officer of the county government;

(2) to execute the policies, directives and legislative actions of the council;

(3) to direct and coordinate operational agencies and administrative activities of the county government;

(4) to prepare annual operating and capital improvement budgets for submission to the council and in the exercise of these responsibilities he shall be empowered to require such reports, estimates and statistics on an annual or periodic basis as he deems necessary from all county departments and agencies;

(5) to supervise the expenditure of appropriated funds;

(6) to prepare annual, monthly and other reports for council on finances and administrative activities of the county;

(7) to be responsible for the administration of county personnel policies including salary classification plans approved by council;

(8) to be responsible for employment and discharge of personnel subject to the provisions of subsection (7) of § 4-9-30 and subject to the appropriation of funds by the council for that purpose; and

(9) to perform such other duties as may be required by the council.

HISTORY: 1962 Code § 14-3742; 1975 (59) 692.

CASE NOTES

The powers and duties of the administrator include executing the policies, directives, and legislative actions of the council; preparing budgets for submission to the council and, in the exercise of that responsibility, having the authority to require such reports, estimates, and statistics on an annual or periodic basis as the administrator deems necessary; preparing annual, monthly, and other reports for council on finances and administrative activities of the county; and performing such other duties

as may be required by the council. Wilson v. Preston, 378 S.C. 348, 662 S.E.2d 580 (2008).

A county administrator acted within his authority in terminating tax assessor for insubordination based on her refusal to withdraw her appeal from assessment decision of county board of assessment appeals. Therefor, her termination did not fall within public policy exception to rule that an at-will employee may be terminated at any time for any reason or for no reason. Even though the statute gave the tax assessor the right to appeal any modification or disapproval of any appraisal made, she was not required to do so. None of the statutes gave the tax assessor the sole discretion to determine which cases to appeal and, the tax assessor, who served by appointment, was subject to discharge by administrator or county council. Antley v. Shepherd, 340 S.C. 541, 532 S.E.2d 294 (Ct. App. 2000), aff'd as modified 564 S.E.2d 116 (2002).

The Home Rule Act does not empower the county administrator to enforce county personnel policies upon employees of elected officials. A county's authority is not expanded beyond that explicitly granted in the statute. Eargle v. Horry County, 344 S.C. 449, 545 S.E.2d 276 (2001).

Absent express statutory authority, a county administrator or the county governing body has no authority to suspend the employees of an elected official, even if provided for in the county's personnel policies. Eargle v. Horry County 335 S.C.425, 517 S.E.2d 3 (Ct.App. 1999). *Ed. Note – This is an opinion issued en banc overturning the prior decision issued by the Court of Appeals in Eargle v. Horry County.*

ATTORNEY GENERAL'S OPINIONS

A county administrator would have no power to enforce personnel policies against an employee of a treasurer under 6-9-630(7). Op. Atty. Gen., dated May 7, 2012. See previous summaries.

According to the provisions of §4-9-630, county administrators are charged with the responsibility of hiring county employees. Under a council-administrator form of government, council must go through the county administrator with regard to hiring of an internal auditor. Op. Atty. Gen., dated April 4, 2008.

The involvement of the county administrator is necessary in the hiring of a county attorney or internal auditor even if they are hired as "independent contractors" instead of "employees." Although county council may have the authority to establish the scope of these individuals' functions, the hiring of these persons falls within the purview of the county administrator's duties as outlined in § 4-9-630. Op. Atty. Gen., dated August 16, 2002.

Choosing legal counsel is an exercise of council's governmental or legislative function and it would be improper for a county council to enter into a contract with a county attorney to provide general

legal services beyond the term for which the members of the council were elected. Unpublished Op. Atty. Gen., dated January 17, 1997. *Ed. Note – This opinion does not address the authority of county council to directly hire the county attorney. See § 4-9-630.*

Item (5) of § 4-9-630 does not give the administrator authority over the disbursement of funds where the method of disbursement is set forth in the General Appropriations Act, such as the supplement provided for members of the county board of voter registration. Unpublished Op. Atty. Gen., dated February 23, 1994.

The county administrator, rather than council, has the authority to employ and discharge the county attorney. 1987 Op. Atty. Gen., No. 87-2.

Under the council-administrator form of government, a county administrator, rather than a county council itself, would have authority to employ and discharge a zoning administrator once that position is established by council following the advent of home rule. 1986 Op. Atty. Gen., No. 86-48.

SECTION 4-9-640: Preparation and Submission of Budgets

EDITOR'S NOTE: This section is self-explanatory.

§ 4-9-640. Preparation and submission of budget and descriptive statement.

> **The county administrator shall prepare the proposed operating and capital budgets and submit them to the council at such time as the council determines. At the time of submitting the proposed budget, the county administrator shall submit to the council a statement describing the important features of the proposed budgets including all sources of anticipated revenue of the county government and the amount of tax revenue required to meet the financial requirements of the county.**

HISTORY: 1962 Code § 14-3743; 1975 (59) 692.

SECTION 4-9-650: Administrator's Authority and County Officials

EDITOR'S NOTE: This section is self-explanatory.

§ **4-9-650. Authority of administrator over certain elected officials.**

> **With the exception of organizational policies established by the governing body, the county administrator shall exercise no authority over any elected officials of the county whose offices were created either by the Constitution or by the general law of the State.**

HISTORY: 1962 Code § 14-3744; 1975 (59) 692.

CASE NOTES

In a case brought by an individual for injuries allegedly received from deputies during the course of an arrest, the federal district court dismissed the case against the county and individual members of county council on the basis that neither the county nor council members have authority over the sheriff or its deputies. With the exception of organizational policies a county administrator, pursuant to §4-9-650, shall exercise no authority over officials whose offices were created either by the constitution or general laws of the state. Whitfield v. Beaufort County, et. al., 2008 WL 4114932 (D.S.C.).

South Carolina Code Ann. § 4-9-650 (1986) provides that the county administrator has no authority over elected officials of the county whose offices are created by the constitution or general law of the state. Although the statutes do not specifically provide who has authority to assign offices and possess the keys thereto in the county courthouse, the provision of § 14-17-210 giving the clerk of court charge of the courthouse must include the assignment of offices and possession of keys. McCormick County Council v. Butler, 361 S.C. 92, 603 S.E.2d 586 (2004).

The Home Rule Act does not empower the county administrator to enforce county personnel policies upon employees of elected officials. A county’s authority is not expanded beyond that explicitly granted in the statute. Eargle v. Horry County, 344 S.C. 449, 545 S.E.2d 276 (2001).

ATTORNEY GENERAL'S OPINIONS

A county administrator would have no authority to direct a coroner to place the county seal on his county vehicle, as this would be an attempt to direct the coroner to act in a certain way or to interpret

his responsibilities. Op. Atty. Gen., dated April 8, 2013.

Section 14-17-210 gives clerks of court "charge of the courthouse." This charge has been interpreted to include assigning room numbers and controlling the keys of the courthouse. The county administrator would not have the authority under 4-9-650 to exercising this type of authority over a clerk of court. Op. Atty. Gen., dated May 16, 2012.

The administrator's authority under §4-9-650 has no direct limitation, but cannot be interpreted to supersede the limitation upon application of county personnel policies to elected officials and the enforcement of county personnel policies in §4-9-30(7). The treasurer's authority over his personnel includes the decision of the location where his employees work. Op. Atty. Gen., dated May 7, 2012.

Pursuant to S.C. Code Ann. § 14-17-210 (1976), the Clerk of Court has charge of the courthouse and has the authority to exercise control over the assignment of rooms and possess all office keys. Order of Chief Justice dated June 23, 2004.

Where an internal auditor is subject to the personnel rules of the county, the appointment and supervisory authority over that individual rests with the county administrator, not with county council. Unpublished Op. Atty. Gen., dated September 24, 1996.

With the exception of organizational policies established by council, the administrator has no authority over any elected officials of the county whose office was created by the constitution or general law. Unpublished Op. Atty. Gen., dated August 31, 1992.

SECTION 4-9-660: Council Members' Authority and County Officials

EDITOR'S NOTE: This section is self-explanatory.

§ 4-9-660. Authority of council and its members over county officers and employees.

> **Except for the purposes of inquiries and investigations, the council shall deal with county officers and employees who are subject to the direction and supervision of the county administrator solely through the administrator, and neither the council nor its members shall give orders or instructions to any such officers or employees.**

HISTORY: 1962 Code § 14-3745; 1975 (59) 692.

CASE NOTES

Oversight of the county's business and finances is "one of the fundamental responsibilities of a county council," and §4-9-660 of the Home Rule Act specifically authorizes a county council to conduct its own investigations as it sees fit, without acting through the county administrator. Bradshaw et al. v. Anderson County, et al., 388 S.C. 257, 695 S.E.2d 842 (2010).

Except for purposes of inquiry and investigations, a county council shall deal with county officers and employees who are subject to the direction and supervision of the county administrator solely through the administrator, and neither the council, nor its members shall give orders or instructions to any officers or employees. Whitfield v. Beaufort County, et al., 2008 WL 4114932 (D.S.C.).

ATTORNEY GENERAL'S OPINIONS

Authority to hire and discharge the county attorney is within the purview of the administrator in the council-administrator form of government under the Home Rule Act. 1987 Op. Atty. Gen., No. 87-2.

Under the council-administrator form of government, a county administrator, rather than a county council itself, would have authority to employ and discharge a zoning administrator once that position is established by council following the advent of home rule. 1986 Op. Atty. Gen., No. 86-48.

County council may require employees to use a time clock and withhold their compensation for nonconformity as long as the same requirement is applied uniformly to all county employees. 1976-77 Op. Atty. Gen., No. 77-124.

The provisions of Act No. 283 of 1975, the Home Rule Act, do not empower the county council to alter the salary of the county legislative delegation's secretary once the delegation has set it. 1976-77 Op. Atty. Gen., No. 77-222.

SECTION 4-9-670: Applicability of Article 1

EDITOR'S NOTE: This section incorporates the provisions of Article 1 into the council-administrator form of government.

§ 4-9-670. Applicability of Article 1.

> **Except as specifically provided for in this article, the structure, organization, powers, duties, functions and responsibilities of county government under the council-administrator form shall be as prescribed in Article 1 of this chapter.**

HISTORY: 1962 Code § 14-3746, 1975 (59) 692.

ARTICLE 9: COUNCIL-MANAGER FORM OF GOVERNMENT

SECTION 4-9-810: County Council Organizational Requirements

EDITOR'S NOTE: This section is self-explanatory.

§ 4-9-810. Membership of council; election and term of members.

> **The council in those counties adopting the council-manager form of government provided for in this article shall consist of not less than five nor more than twelve members who are qualified electors of the county. Council members shall be elected in the general election for terms of two or four years commencing on the first of January next following their election.**

HISTORY: 1962 Code § 14-3770; 1975 (59) 692.

SECTION 4-9-820: Employment and Removal of Managers

EDITOR'S NOTE: This section is self-explanatory.

§ 4-9-820. Employment and qualifications of manager; term of office; compensation; procedure for removal.

> **The council shall employ a manager who shall be the administrative head of the county government and shall be responsible for the administration of all the departments of the county government which the council has the authority to control. He shall be employed with regard to his executive and administrative qualifications only, and need not be a resident of the county at the time of his employment. The term of employment of the manager shall be at the pleasure of the council and he shall be entitled to such compensation for his services as the council may determine. The council may, in its discretion, employ the manager for a definite term. If the council determines to remove the county manager, he shall be given a written statement of the reasons alleged for the proposed removal and the right to a hearing thereon at a public meeting of the council.**
>
> **Within five days after the notice of removal is delivered to the manager, he may file with the council a written request for a public hearing. This hearing shall be held at a council meeting not earlier than twenty days nor later than thirty days after the request is filed. The manager may file with the council a written reply not later than five days before the hearing. The removal shall be stayed pending the decision at the public hearing.**

HISTORY: 1962 Code § 14-3771; 1975 (59) 692.

Cross References –
Employee handbook not a contract, § 41-1-110

CASE NOTE

Failure to comply with the statutory removal procedure by not supplying specific reasons for removal or not providing a meaningful public hearing are proper grounds for a wrongful discharge suit. A public officer discharged unlawfully is entitled to all wages without offset. Drawdy v. Town of Port Royal, 302 S.C. 125, 397 S.E.2d 98 (1992). *Ed. Note – Interpreting § 5-13-70, a parallel provision for municipal managers.*

SECTION 4-9-830: Powers and Duties of Manager

EDITOR'S NOTE: This section is self-explanatory.

§ 4-9-830. Powers and duties of manager.

The power and duties of the manager shall include, but not be limited to, the following:

(1) to serve as the chief administrative officer of the county government;

(2) to execute the policies, directives and legislative actions of the council;

(3) to direct and coordinate operational agencies and administrative activities of the county government;

(4) to prepare annual operating and capital improvement budgets for submission to the council and, in the exercise of that authority, he shall be empowered to require such reports, estimates and statistics on an annual or periodic basis as he deems necessary from all county departments and agencies for the performance of his duties in budget preparation;

(5) to supervise the expenditure of appropriated funds;

(6) to prepare annual, monthly and other reports for council on finances and administrative activities of the county;

(7) to be responsible for the administration of county personnel policies including salary and classification plans approved by council;

(8) to be responsible for employment and discharge of personnel subject to the provisions of subsection (7) of § 4-9-30 and subject to the appropriation of funds by the council for that purpose; and

(9) to perform such other duties as may be required by the council.

HISTORY: 1962 Code § 14-3772; 1975 (59) 692.

ATTORNEY GENERAL'S OPINION

Under the council-manager form of government, the county manager is responsible for the employment and discharge of an appointed treasurer in the same manner as other department heads. 1991 Op. Atty. Gen., No. 91-31.

SECTION 4-9-840: Preparation and Submission of Budgets

EDITOR'S NOTE: This section is self-explanatory.

§ 4-9-840. Preparation and submission of budget and descriptive statement.

> **The county manager shall prepare the proposed operating and capital budgets and submit them to the council at such time as the council determines. At the time of submitting the proposed budget, the county manager shall submit to the council a statement describing the important features of the proposed budgets including all sources of anticipated revenue of the county government and the amount of tax revenue required to meet the financial requirements of the county.**

HISTORY: 1962 Code § 14-3773; 1975 (59) 692.

SECTION 4-9-850: Manager's Authority and County Officials

EDITOR'S NOTE: This section is self-explanatory.

§ 4-9-850. Authority of county manager over elected officials; authority of council and its members over county officers and employees.

> **With the exception of organizational policies established by the governing body, the county manager shall exercise no authority over any elected officials of the county.**
>
> **Except for the purposes of inquiries and investigations, neither the council nor its members shall give orders or instructions to county officers or employees.**

HISTORY: 1962 Code § 14-3774; 1975 (59) 692.

ATTORNEY GENERAL'S OPINION

Under the council-manager form of government, it is the county manager who is responsible for the employment and discharge of an appointed treasurer in the same manner as other department heads. 1991 Op. Atty. Gen., No. 91-31.

SECTION 4-9-860: Election or Appointment of Auditor and Treasurer

EDITOR'S NOTE: Under the county-manager form of government, and no other form, the county auditor and the county treasurer may be appointed or elected at the option of the county council.

§ 4-9-860. Election or appointment of county treasurer and auditor.

> **The county treasurer and county auditor, or their counterparts, by whatever terms those officials are designated may be elected or appointed by council as the council may determine by ordinance. If such officials are appointed, they shall be subject to control by council and the manager in the same manner as other appointed county department heads.**

HISTORY: 1962 Code § 14-3775; 1975 (59) 692.

Cross references --

> *Appointment by the governor of the county auditor and the county treasurer in counties not having either a council, council-supervisor or council-administrator form of government, see §§ 12-39-10 and 12-45-10 respectively.*

SECTION 4-9-870: Applicability of Article 1

EDITOR'S NOTE: This section incorporates the provisions of Article 1 into the council-manager form of government.

§ 4-9-870. Applicability of Article 1.

> **Except as specifically provided for in this article, the structure, organization, powers, duties, functions and responsibilities of county government under the council-manager form shall be as prescribed in Article 1 of this chapter.**

HISTORY: 1962 Code § 14-3776; 1975 (59) 692.

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