

Home Rule Handbook for County Government 2023 Supplement

**File with the 2013 Home Rule
Handbook for County Government**



**SOUTH CAROLINA
ASSOCIATION OF COUNTIES**

PREFACE

This Supplement should be stored with the *2013 Home Rule Handbook for County Government*. Any time the *Home Rule Handbook for County Government* main volume is consulted, this supplement must be checked for statutory amendments, case law, and Attorney General opinions interpreting the statutes, which were issued after the main volume was published.

This publication is not designed to be the final word on the law affecting county government structure and operations. The case notes, cross-references, and summaries of Attorney General 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.

This publication is intended to give you a readily available reference to begin your search for information. 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, research, 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 email us at scac@scac.sc.

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PART I

**PROVISIONS THAT APPLY
TO ALL FORMS OF GOVERNMENT**

ARTICLE 1: GENERAL PROVISIONS

P. 5 SECTION 4-9-10: CHOOSING THE FORM OF GOVERNMENT

ATTORNEY GENERAL’S OPINIONS

This Office has previously advised that “two alternatives be given on a ballot in a referendum being conducted pursuant to Section 4-9-10(c): retaining the present form of government, method of election, or number of council members, or changing to one designated form, number, or method of election.” Op. S.C. Att’y Gen., 1986 WL 289887 (November 10, 1986). The proposed question follows the suggested format by presenting the current method of election, council members are elected from single-member districts, and presenting an alternative method of election. However, as drafted, the alternative method of election states each member would be “elected on an at-large basis” and yet members would still be required “to establish and maintain a legal residence in one of those eleven (11) single-member districts.” It is unclear if this is a drafting error because the description of the method of election as “an at-large basis” is inconsistent with requiring a member's residence to be within a single-member district. If the proposed question was intended to present the alternative method of election as an at-large basis, references to maintaining residence in single-member districts should be removed to avoid confusion. The proposed referendum question can also be read to suggest the method of election is intended to be a hybrid of both the single-member district and at-large methods. If this was the intent, this Office has not identified authority supporting such a hybrid method of election. The court could find that the proposed referendum question generally meets the form requirements in § 4-9-10(c) However, additional clarification may be necessary regarding what alternative to the current method of election is intended. Op. S.C. Att’y Gen., 2021 WL 4468830 (Sept. 22, 2021).

The language in § 4-9-10 indicating that a change in the method of election of county council requires a referendum deals with a change in whether council is elected at large or from single-member districts. Changing the method of election of city council from partisan to nonpartisan, as allowed under § 5-16-60, likely does not require a referendum in the absence of any legislative provision expressly requiring a referendum. Op. S.C. Att’y Gen., 2014 WL 1398577 (March 31, 2014). *[EDITOR’S NOTE: This opinion deals with nonpartisan city council elections as provided in § 5-16-60. County councils do not currently have the statutory option to have nonpartisan elections.]*

P. 11 SECTION 4-9-25: GENERAL POLICE POWER

ATTORNEY GENERAL'S OPINIONS

Although § 4-9-25 grants counties the authority to enact regulations, resolutions, and ordinances, regarding firearms that are not inconsistent with the Constitution and general law of this State, political subdivisions are subject to mandates of the Legislature and the Office of the Attorney General consistently construes § 23-31-510 and § 23-31-520 of the South Carolina Code as expressly occupying the field of South Carolina firearm regulation and any local ordinance attempting to encroach on the state's authority in this regard is preempted. Op. S.C. Att'y Gen., 2021 WL 3703908 (August 3, 2021).

County Council has the power to enact ordinances regulating nuisance businesses pursuant to § 4-9-25. However, if an ordinance makes it illegal to operate a business constituting a public nuisance, a court may find that certain provisions of such an ordinance may violate Section 14 of Article VIII of the South Carolina Constitution. Op. S.C. Att'y Gen., 2021 WL 1832300 (Mar. 1, 2021).

A court could find that both counties and municipalities have broad authority to impose uniform service charges in order to further the general health, safety, and welfare of their residences pursuant to § 4-9-25. Op. S.C. Att'y Gen., 2021 WL 390944 (January 21, 2021).

A court could find ordinances imposing a fee to obtain copies of an autopsy report held by a Coroner's Office as "preserving health, peace, order and good government" pursuant to the authority granted by § 4-9-25 and § 4-9-30". Moreover, § 17-5-100 specifically requires coroners to follow lawful orders given to them by their respective county governing bodies, and "receive the same fees and costs as are allowed in other cases." Counties are also not preempted under § 44-115-80, regulating the fees a physician may charge for a search and duplication of medical records, from passing an ordinance setting a fee for copies of autopsy reports in the possession of a Coroner's Office. Op. S.C. Att'y Gen., 2020 WL 3469318 (June 4, 2020).

The position of Animal Control Director is an employee rather than a public official; therefore, serving as both Animal Control Director and as a police officer, for example, does not constitute dual office holding. Op. S.C. Att'y Gen., 2019 WL 1644875 (March 27, 2019).

An ordinance which requires a vehicle to be towed if proof of insurance is not furnished could be drafted such that it is consistent with the general laws of South Carolina, the State Constitution, and the Federal Constitution pursuant to the authority granted by § 4-9-25. Op. S.C. Att'y Gen., 2018 WL 1663623 (March 23, 2018).

Counties have the authority to bring suit against the manufacturers, distributors and retailers of opioid products. So long as the county can demonstrate an infringement of its own rights or of a statutory right bestowed upon it, then it has standing to sue. Counties are empowered to adopt

ordinances to abate public nuisances and are empowered to bring a public nuisance action based upon the threat to public health. Op. S.C. Att’y Gen., 2018 WL 1324038 (March 9, 2018).

While school resource officers serve a “school operating purpose,” such officers’ primary duties are acting as a “law enforcement officer.” Sections 4-9-25 and 4-9-30(5) specifically enumerate law enforcement as a county purpose and that is a proper public purpose. However, the county may not use property taxes which are levied upon owner-occupied homes given the exclusion of taxes on owner occupied homes for school operating purposes in § 12-37-220(B)(47). The county could use other funds for the costs of school resource officers. Op. S.C. Att’y Gen., 2017 WL 3438532 (July 27, 2017).

County ordinances are one type of state law which governs homeowners’ associations. Counties are political subdivisions and exercise a portion of the sovereign powers given to them by the General Assembly, including the police power in § 4-9-25 and § 6-29-950. County ordinances with the force of state law will control in a conflict with a restrictive covenant, which is a creature of contract. Op. S.C. Att’y Gen., 2017 WL 2292984 (May 15, 2017).

Local government has the authority under the general police powers of § 4-9-25 to adopt an ordinance regulating the care and control of dogs, cats, and other animals. The legislature clearly delegated its authority to local governing bodies to regulate this area of the law in § 47-3-20. Op. S.C. Att’y Gen., 2014 WL 2591471 (May 20, 2014).

P. 21 SECTION 4-9-30: SPECIFIC POWERS GRANTED

Cross Reference -

Beach Preservation Act, see § 6-1-610 et seq.

Local Accommodations Tax revenue for beach renourishment, see § 6-4-10 et seq.

Local government authority to adopt additional traffic ordinances, see § 56-5-30

Late payment penalties on taxes and assessments, see § 12-45-180

Countywide business registration, see § 12-37-135

P. 24 SECTION 4-9-30(5): SPECIFIC POWERS GRANTED

CASE NOTES

Service or user fees must benefit the payer of the fee in a way different than members of the general public. Greenville County’s road maintenance fee and telecommunications network fee were deemed unlawful taxes, because according to the South Carolina Supreme Court, the fees violate § 6-1-310 of the S.C. Code. The Court relied on *Brown v. Cty of Horry*, 308 S.C. 180, 417 S.E.2d 565 (1992) and a 1997 amendment to Section 6-1-300 when determining that the fees are invalid. While the fees met the four factors of the *Brown* test as described below, the Court concluded the fees did not benefit the payer in some manner **different** than members of the general public, and thus, do not qualify as service or user fees permitted pursuant to the Code. *Burns v. Greenville Cty. Council*, 433 S.C. 583, 861 S.E.2d 31, 32 (2021) (emphasis added). [EDITOR’S NOTE: The Court described “different” as meaning “unique” or “peculiar” to the payer of the fee. The General

Assembly addressed the findings in the Burns' case with the passage of Act 236 of 2022 which amended Chapter 37 of Title 12 and Chapter 1 of Title 6. Please refer to Revenue Resources for County Government 2023 Supplement (Page 1) for further discussion of Act 236.

P. 27 SECTION 4-9-30(7): SPECIFIC POWERS GRANTED

CASE NOTES

Counties lack the authority to control the employment of elected officials' employees or the outcome of any employment grievance. Therefore, the jury clerk was not an employee of the county, but was an employee of the clerk of court. *Seabrooks v. Aiken County*, (D. S.C. Aug. 18, 2016) 2016 WL 4394275.

Only the county board of voter registration and elections has the authority to hire and remove the director and to supervise the director on a day-to-day basis. Under § 4-9-30(7), the county has no employment authority over the director even though the county may have provided administrative services, training, salary, benefits, and office space. *Jackson v. Richland Cnty.*, (D. S.C. Feb. 24, 2016) 2016 WL 3456943.

P. 31 SECTION 4-9-30: GENERALLY

ATTORNEY GENERAL'S OPINIONS

We do not believe that Berkeley County can rent the county building to the Berkeley County Chamber of Commerce for a nominal rent amount. As discussed above, an entity which is statutorily authorized to own and lease real property can lease the property to a private organization for fair market value or its equivalent value in money, which includes indirect benefits resulting to the public. In *Ashmore et al. v. Greater Greenville Sewer District et al.*, 211 S.C. 77, 44 S.E.2d 88 (Aug. 28, 1947), the court stated that chambers of commerce were "purely private organizations, performing no governmental function." Because taxes must be levied to pay for the maintenance, utilities, and janitorial services of the county building, it is our opinion that Berkeley County must determine the fair market rental rate of the building and require payment from the Berkeley County Chamber of Commerce, a private organization, in that amount or its equivalent monetary value. Op. S.C. Atty. Gen., 2020 WL 6821344 (Nov. 5, 2020).

The Legislature provided an extensive list of enumerated powers of county governments including the power to "make appropriations for functions and operations of the county ..." pursuant to Section 4-9-30. In addition, Section 4-9-140 directs counties to adopt an annual budget for the operation of the county. Thus, decisions on how county funds shall be appropriated are not only within a county's authority but are the duty of the county's governing body. However, we note the authority of a county's governing body is not without limitations. We cannot opine conclusively on whether a county can generally deduct money from an elected official's budget to recoup fees paid to a consultant performing tasks normally performed by the official. Because your question is factual in nature, we cannot address it fully in an opinion. Nonetheless, we continue to advise that the Legislature vested county governing bodies with broad budgetary authority. Therefore, we

believe appropriating additional funds to pay for personnel performing county functions is within a county's authority. However, in keeping with our prior opinions, we believe a county cannot interfere with the duties of an elected official or use its authority to appropriate funds to effectively terminate the office of the elected official. Op. S.C. Att'y Gen., 2019 WL 6244761 (Nov. 7, 2019). Whether a county can enact an ordinance to defend and indemnify public employees and officials is an issue for the court or legislature to address. However, such an ordinance cannot exceed the scope of the Tort Claims Act or the Constitution. Further, without specific statutory authorization, indemnification cannot be for criminal acts involving indictment. Op. S.C. Att'y Gen., 2014 WL 6705714 (Nov. 18, 2014).

Whether county council can delegate powers set forth in § 4-9-30 depends on the nature of the duty to be performed. Duties that are purely ministerial and executive which do not involve the exercise of discretion may be delegated. Powers involving the exercise of judgment and discretion are in the nature of public trusts and cannot be delegated. Op. S.C. Att'y Gen., 2014 WL 4382452 (Aug. 19, 2014).

P. 33 SECTION 4-9-30(2): SPECIFIC POWERS GRANTED

ATTORNEY GENERAL'S OPINIONS

This office has previously opined that the S.C. Procurement Code applies to counties. Op. S.C. Att'y Gen., 2017 WL 6548005 (Dec. 5, 2017). *[EDITOR'S NOTE: This opinion cites § 11-35-40(2) as authority. However, § 11-35-310(18) defines "governmental body" and specifically excludes counties from the definition. Counties are required by § 11-35-50 to adopt a competitive procurement ordinance. The earlier Attorney General's opinion cited as authority outlines the law and reaches the conclusion that political subdivisions are not subject to the S.C. Procurement Code.]*

P. 33 SECTION 4-9-30(5): SPECIFIC POWERS GRANTED

ATTORNEY GENERAL'S OPINIONS

Section 4-9-30(5)(a) gives county councils the authority to appropriate funds for the operations of sheriffs' departments. County council has both the authority and the responsibility to make appropriations sufficient for the proper funding of the sheriff's department. In addition, consistent with prior opinions, this Office believes the county council may not use its budgetary authority to interfere with the operating decisions of the sheriff's department. However, once county council adopts a budget, expenditures over this amount could be viewed by a court as unlawful in violation of both the budget ordinance and Section 8 of Article X of the South Carolina Constitution. If a court finds the sheriff acted negligently in expending funds over the amount appropriated, he or she could be held personally liable. Op. S.C. Att'y Gen., 2020 WL 5259200 (Aug. 17, 2020).

P. 35, Op. Atty. Gen., dated December 03, 2008, was affirmed in Op. S.C. Att’y Gen., 2018 WL 3698382 (July 20, 2018).

While school resource officers serve a “school operating purpose,” such officers primary duties are acting as a “law enforcement officer.” Sections 4-9-25 and 4-9-30(5) specifically enumerate law enforcement as a county purpose and that is a proper public purpose. However, the county may not use property taxes which are levied upon owner-occupied homes given the exclusion of taxes on owner occupied homes for school operating purposes in Section 12-37-220(B)(47). The county could use other funds for the costs of school resource officers. Op. S.C. Att’y Gen., 2017 WL 3438532 (July 27, 2017).

Section 6-1-330 establishes a floor for the number of votes required to approve a uniform service charge pursuant to § 4-9-30(5) and absent a statutory directive to the contrary, the county has the authority to require a super majority vote for enactment of ordinances. Op. S.C. Att’y Gen., 2017 WL 1095386 (March 14, 2017).

A special tax district made up of all the unincorporated areas of the county and created pursuant to § 4-9-30(5)(a)(iii) is subject to the millage rate limitations in § 4-9-30(5) and not those in § 6-1-320. Therefore, because § 4-9-30(5)(a)(iii) and §§ 4-9-30(5)(b)-(h) do not impose millage rate limitations, the county in which the district is located is authorized to set the annual millage in an amount determined by council to be necessary for operating purposes. Op. S.C. Att’y Gen., 2015 WL 9701674 (Dec. 30, 2015).

After a public hearing, a county can likely reduce the size of a special purpose district which was created by county council in 1985 following a referendum vote, without the agreement or consent of the district’s board of directors. Op. S.C. Att’y Gen., 2015 WL 4596715 (July 16, 2015).

Section 4-9-30(5)(a) authorizes counties to create a special tax district for functions and operations of the county. Since counties lack authority to create an autonomous political subdivision, and a special tax district must be regulated, modified, or abolished by a county council, the district and its governing board are probably considered an extension of the county. As such, a special tax district and its governing board would be afforded the same tort and common law immunities provided to counties and employees of the counties. This would probably include immunity from adverse possession claims. Op. S.C. Att’y Gen., 2015 WL 1870567 (April 9, 2015).

A county cannot require landowners to have a forest management plan in order to qualify for an agricultural use assessment. This is beyond the scope of a county’s police power under § 4-9-25. Property tax laws require statewide uniformity. State law does not require a forest management plan to qualify for an agricultural assessment and state law preempts local legislation within this area. Op. S.C. Att’y Gen., 2014 WL 4953188 (Sept. 22, 2014).

Pursuant to § 4-9-30(5)(a), counties have the authority to assess and levy property taxes. Also, counties are required to charge a late penalty on all taxes and assessments under § 12-45-180, while municipalities have the option to charge a late penalty under § 5-7-300. However, neither a

county council nor a city council is authorized to waive or lower a penalty, as this is solely within the discretion of the county treasurer. Op. S.C. Att’y Gen., 2014 WL 3414950 (July 3, 2014).

Pursuant to § 4-9-30(5)(a), economic development is a function and operation of the county. Local governments have the discretionary power to enter into contracts pertaining to economic development services. Op. S.C. Att’y Gen., 2014 WL 1398598 (Feb. 3, 2014).

Section 4-9-30 provides counties with additional and supplemental methods for funding improvements. Specifically, § 4-9-30(5)(a) provides counties with the option of imposing uniform service charges or user fees upon those who use county services in order to reduce the tax burden which otherwise would have to be borne by taxpayers generally. However, in this instance, the Attorney General’s Office found that the fire service fee is actually a tax and therefore cannot be applied to tax exempt entities. Op. S.C. Att’y Gen., 2014 WL 1398601 (Jan. 15, 2014).

Section 4-9-30(5)(a) & (b) authorize counties to create special tax districts that operate as either an administrative division of the county or as a separate appointed commission. Whether by administrative body or commission, a tax district only has powers specifically granted to it by ordinance or powers reasonably implied. Thus, the district’s power to acquire and/or hold title to purchased property would depend on the ordinance. Op. S.C. Att’y Gen., 2013 WL 3960433 (July 17, 2013).

P. 41 SECTION 4-9-30(6): SPECIFIC POWERS GRANTED

ATTORNEY GENERAL’S OPINIONS

Jasper County has the right to enact ordinances bringing a county agency, board, or commission under its control. Pursuant to §§ 4-9-30(6) and 4-9-170, Jasper County has the power to enact ordinances establishing, regulating, and modifying a county board or commission. Jasper County is also authorized to enact ordinances prescribing the function of and providing for the appointment of the members of a county board or commission pursuant to these statutes. We have previously explained that “our courts consistently recognize local ordinances are presumed valid unless and until a court declares them to be invalid.” Op. S.C. Att’y Gen., 2021 WL 3703908 (Aug. 3, 2021). Therefore, any ordinance passed by Jasper County Council is presumed valid unless and until a court rules otherwise. Although the Jasper County Aeronautics Commission has many of the characteristics of a county agency, it is not entirely free from doubt, given the fact that our courts have reached seemingly conflicting conclusions regarding airport commissions. Therefore, we believe the wisest course of action would be to petition a court for a declaratory judgment to determine the status of the Commission as either a political subdivision or special purpose district or as a post-Home Rule agency of the County. Op. S.C. Att’y Gen., 2023 WL 3034524, (Apr. 13, 2023).

Pursuant to § 4-9-30(6) and Section 3 of Act 283 of 1975, when a county agency or office is created by the state legislature prior to the Home Rule Act and owns certain property, county council may

enact an ordinance to bring that agency or office under the jurisdiction and control of the county council. Upon doing so, property owned by the agency or office would then be owned by the county but must be used for a public purpose. Op. S.C. Att’y Gen., 2014 WL 4953184 (Sept. 23, 2014).

P. 42 SECTION 4-9-30(7): SPECIFIC POWERS GRANTED

ATTORNEY GENERAL’S OPINIONS

A county veterans’ affairs officer is considered an employee of the Department of Veterans’ Affairs that was established following the passage of Act 26 of 2019 and receives compensation through the Department of Administration. Therefore, a county veterans’ affairs officer is considered a state officer rather than a county officer and is not subject to the county personnel policies in § 4-9-30(7). S.C. Att’y Gen., 2020 WL 2570886 (May 6, 2020). *[EDITOR’S NOTE: The opinion provides an analysis of the changes made to Chapter 11 of Title 25 following the passage of Act 26 of 2019. This opinion overrules all prior opinions determining that a county veterans’ affairs officer is a county officer.]*

Pursuant to § 4-9-30(7), appropriating additional funds to pay for personnel performing county functions is within a county’s authority. However, a county cannot interfere with the duties of an elected official or use its authority to appropriate funds to effectively terminate the office of the elected official. S.C. Att’y Gen., 2019 WL 6244761 (Nov. 7, 2019).

A budget savings suggestion program which is an incentive award program whereby employees are given a financial incentive to recommend recurring future savings suggestions, as distinguished from extra compensation or allowance for previous work, would be within the authority of council to adopt pursuant to § 4-9-30(7). However, there are numerous statutes and constitutional provisions which must be adhered to, and they are discussed in this opinion. Op. S.C. Att’y Gen., 2016 WL 4222141 (Aug. 1, 2016).

A county veterans’ affairs officer is not a county employee for purposes of county grievance policies pursuant to § 4-9-30(7) and he is vested with the authority to manage personnel, including hiring and firing, without oversight by the county administrator or council. But a veterans’ affairs officer is a county officer rather than a state officer. Thus, a county veterans’ affairs officer must be provided legal representation by the county if one of his employees files a lawsuit based upon a personnel action. Op. S.C. Att’y Gen., 2014 WL 7342086 (Dec. 12, 2014). *[EDITOR’S NOTE: The subject of this opinion was revisited after the passage of Act 26 of 2019 that amended Chapter 11 of Title 25. Please refer to Op. S.C. Att’y Gen., 2020 WL 2570886 (May 6, 2020) above.]*

Under § 4-9-30(7), the authority of county council does not extend to any personnel employed by an authority outside county government. Since the governor appointed the members of the county board of voter registration and elections upon the recommendation of the legislative delegation, such an appointment was “by an authority outside of county government.” Therefore, county

council may not delegate to itself, in the form of a memorandum of understanding or otherwise, operational control of the Board. Also, county council does not possess the authority to withhold legal funding from the Board in order to fulfill the terms and conditions of the memorandum of understanding. Op. S.C. Att’y Gen., 2014 WL 3352175 (June 30, 2014).

Pursuant to § 4-9-30(7), county governments may increase, but may not reduce, the salary of officials elected by the people. However, in the absence of any promise to continue providing elected officials with insurance benefits through the expiration of their terms, state law does not prohibit the county from decreasing the overall compensation of such officials by ceasing to provide them with supplemental benefits. Op. S.C. Att’y Gen., 2014 WL 1398581 (Jan. 23, 2014).

P. 47 SECTION 4-9-30(9): SPECIFIC POWERS GRANTED

ATTORNEY GENERAL’S OPINIONS

A court would likely find that the Department of Transportation is not subject to zoning ordinances as long as its actions are in furtherance of the State’s sovereign power of eminent domain pursuant to the S.C. Eminent Domain Procedure Act or the Department’s exclusive authority to construct and maintain a uniform state highway system. Op. S.C. Att’y Gen., 2017 WL 4464414 (Sept. 26, 2017).

P. 49 SECTION 4-9-30(12): SPECIFIC POWERS GRANTED

Act No. 83 of 2019 amended § 4-9-30(12). This act prohibits a county from assessing county license fees and taxes on a professional sports team.

(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. **No county license fee or tax may be levied on a professional sports team as defined in Section 12-6-3360(M)(17).** 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.

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, eff February 24, 1988; 1988 Act No. 495, § 1, eff May 9, 1988; 1989 Act No. 176, § 2, eff June 6, 1989; 1991 Act No. 114, §§ 1, 2, eff June 5, 1991; 1994 Act No. 405, § 1, eff May 24, 1994; 1999 Act No. 113, § 21, eff June 30, 1999; 2019

Act No. 83 (H.4243), § 2, eff May 22, 2019.

ATTORNEY GENERAL'S OPINIONS

A court likely would hold a county governing body may except agricultural businesses from a business registration fee ordinance authorized by Section 12-37-135 if it can identify another law which would exempt those businesses from business license taxes under Section 4-9-30. Section 12-37-135 states that the business registration authorized thereunder “must be administered and enforced in the same manner as the business license tax described in Section 4-9-30(12).” Section 4-9-30(12) lists several exceptions for specific professions and types of business, but Section 4-9-30(12) does not contain an express exception for agricultural businesses. Section 4-9-30(12) does, however, include an exception for “an entity which is exempt from license tax under another law.” Therefore, because Section 4-9-30(12) does not contain an express exception for agricultural businesses, in order for a county governing body to authorize such an exception it must be based on an exemption from license tax under another law. *See Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) (The rule of statutory construction “‘*expressio unius est exclusio alterius*’ or ‘*inclusio unius est exclusio alterius*’ holds that ‘to express or include one thing implies the exclusion of another or the alternative.’”). Op. S.C. Att’y Gen., 2023 WL 2025305 (Feb. 7, 2023).

The question is whether a county may make classifications for purposes of its business license tax based on the domicile of the business. Section 4-9-30(12), allowing counties to levy license taxes, does not permit or prohibit such a classification. Further, we are unaware of any cases dealing specifically with this question. However, we note this Office and our courts have determined other types of classifications related to business licenses are permissible and specifically, do not violate equal protection. Because we do not believe making a classification based on domicile would involve a suspect class or the infringement of a fundamental right, so long as (1) classifying businesses based on domicile bears a reasonable relationship to the legislative purpose, (2) businesses domiciled in Beaufort County are treated alike under similar circumstances, and (3) Beaufort County has a rational basis for classifying businesses domiciled in Beaufort County differently than businesses not located in Beaufort County, we believe such a classification may be permissible. Op. S.C. Att’y Gen., 2022 WL 2975161 (July 19, 2022).

In the limited circumstance where an official charged with overseeing permitting states that a building permit fee “contain[s] a component for the privilege of doing business[,]” a court could find a building permit fee constitutes a de facto business license tax. However, building permits fees should generally not be considered business license taxes or the equivalent. Op. S.C. Att’y Gen., 2018 WL 6252023 (November 19, 2018).

Counties likely have the authority under § 4-9-30(12) to implement retail tobacco licensing, if such ordinance does not effectively prohibit retail tobacco businesses. Section 12-21-660 and Title 12, Chapter 21, Article 5 of the Code generally do not preempt the field of tobacco licensing. Op. S.C. Att’y Gen., 2017 WL 5203262 (Oct. 27, 2017).

P. 50 SECTION 4-9-30(14): SPECIFIC POWERS GRANTED

ATTORNEY GENERAL'S OPINIONS

Counties cannot enact ordinances restricting the use of red lights and sirens by emergency vehicles that are required by state law because local ordinances must not be inconsistent with the constitution or state law. Op. S.C. Att'y Gen., 2014 WL 2538229 (May 12, 2014).

Pursuant to § 4-9-30(14) local governments may enact ordinances in the area of traffic regulation; however, such ordinances may not be in conflict with, or duplicate, the provisions of the Uniform Traffic Act. In this instance, the Attorney General stated that no statutory provision expressly authorizes local jurisdictions to enact ordinances or rules regulating speeding and, therefore, such ordinances are void as in conflict with State law. Additionally, the Attorney General reiterated that assessments and surcharges must be imposed under local traffic ordinances, and that the relevant portions of such must be remitted to the State Treasurer, even where the offense committed was a violation of a county ordinance. Op. S.C. Att'y Gen., 2013 WL 6210746 (Nov. 18, 2013).

P. 54 SECTION 4-9-33: COUNTY POLICE DEPARTMENT CREATION

ATTORNEY GENERAL'S OPINIONS

When dealing with the records of the sheriff, the approval of the sheriff, rather than the county council, is required for records retention schedules pursuant to § 30-1-90 because access to criminal records databases must remain under the sheriff pursuant to § 4-9-33 and county councils have limited authority when dealing with the duties of an elected official pursuant to § 4-9-650. Op. S.C. Att'y Gen., 2016 WL 4917033 (Sept. 6, 2016).

P. 56 SECTION 4-9-35: COUNTY PUBLIC LIBRARY SYSTEMS

ATTORNEY GENERAL'S OPINIONS

While § 4-9-620 provides that the administrator is to be in charge of all departments “controlled” by the county council, § 4-9-35 empowers the library board of trustees to “control and manage” the county library system. Because the library system involves a statewide function and is “controlled” by the board, it is not a department within county council’s control. Thus, in the county-administrator form of government, the county does not have the authority to force the library board of trustees to report to the administrator. Op. S.C. Att'y Gen., 2014 WL 3886690 (July 28, 2014). *[EDITOR'S NOTE: This opinion modifies Op.S.C. Att'y Gen., 2014 WL 1284637 (March 27, 2014).]*

Chief librarians are under the supervision of and report to their respective board of trustees, rather than to their counties, but are subject to the county personnel policies pursuant to § 4-9-38. Because

county council has the right to appoint members to the board, to remove members from the board, to determine their duties, to purchase or lease or convey real property for the library, to approve contracts for the library, and to approve expenditures for the library; it appears that county council can control the board. Thus, in the county-administrator form of government, because the administrator is to be in charge of all departments “controlled” by the county council, the board is accountable to and reports to the administrator. Op. S.C. Att’y Gen., 2014 WL 1284637 (March 27, 2014). [EDITOR’S NOTE: A subsequent AG opinion (Op. S.C. Att’y Gen., 2014 WL 3886690 (July, 28, 2014)) provides that the board is not accountable to the county administrator.]

P. 57 SECTION 4-9-36: DUTIES OF LIBRARY BOARDS OF TRUSTEES

ATTORNEY GENERAL’S OPINIONS

A county chief librarian, as they relate to purchases and furnishing, are supervised by the county board of trustees only pursuant to § 4-9-36(1). Op. S.C. Att’y Gen., 2018 WL 3326901 (June 21, 2018).

Section 4-9-36 grants the board of trustees the power to hire and supervise a chief librarian even without the advice and consent of the county administrator. Op. S.C. Att’y Gen., 2014 WL 4382449 (Aug. 22, 2014).

An ordinance providing that the board of trustees would merely make hiring recommendations to the county council for a chief librarian and where the chief librarian would be accountable to the county council does not comply with § 4-9-36. It is the board who has the authority to hire and supervise a chief librarian who is responsible for the library program and staff without approval of county council. Op. S.C. Att’y Gen., 1983 WL 181894 (May 23, 1983).

P. 61 SECTION 4-9-40: PROVIDING SERVICES WITHIN MUNICIPALITIES

ATTORNEY GENERAL’S OPINIONS

A municipal lien, as provided in Section 5-7-80, cannot be collected by a county using the procedures in Title 12, Chapter 51 (Alternate Procedure for Collection of Property Taxes) where the county does not have a contract with the municipality to collect the municipal lien, because the language of Section 4-9-40 controls and specifically states a county may furnish any of its services *by contract* with any municipal governing body. Op. S.C. Att’y Gen., 2018 WL 1663624 (March 27, 2018) (emphasis supplied).

Section 4-9-40 implicitly recognizes a limitation on the authority of counties to act within the boundaries of a municipality by granting the county the authority to contract for services within the municipality. Section 5-27-120 specifically directs municipal councils of cities with a population greater than 1000 to repair all the streets within the limits of the city. It is irrelevant

which entity built or traditionally maintained the streets. Op. S.C. Att’y Gen., 2016 WL 7031993 (Nov. 15, 2016).

P. 63 SECTION 4-9-41: JOINT ADMINISTRATION OF FUNCTIONS

ATTORNEY GENERAL’S OPINIONS

A court would likely hold a county that agrees to the joint administration of functions with a political subdivision outside its geographic boundaries is permitted to expend its funds in furtherance of that agreement. See S.C. Const. Art. VIII, § 13; S.C. Code § 4-9-41. Further, it is this Office's opinion that a court may well find the proposal that the county's code enforcement officers receive a second commission in an adjacent county violates the dual-office holding prohibition in South Carolina Constitution. See S.C. Const. Art. XVII, § 1A. Op. S.C. Att’y Gen., 2022 WL 1286846 (April 22, 2022).

A municipal lien, as provided in Section 5-7-80, cannot be collected by a county using the procedures in Title 12, Chapter 51 (Alternate Procedure for Collection of Property Taxes) where the county does not have a contract with the municipality to collect the municipal lien, because the language of Section 4-9-40 controls and specifically states a county may furnish any of its services *by contract* with any municipal governing body. Op. S.C. Att’y Gen., 2018 WL 1663624 (March 27, 2018) (emphasis supplied).

P. 64 SECTION 4-9-45: POLICE JURISDICTION OF COASTAL COUNTIES

ATTORNEY GENERAL’S OPINIONS

A coastal county possesses the “legal responsibility” for debris cleanup in the tideland areas between mean high tide and low water despite the presumptive ownership by the State. This responsibility has been delegated to the county: (1) by the grant of the general police powers of the Home Rule Act; (2) more expressly through the grant of police power in that area pursuant to § 4-9-45; and (3) implicitly through DHEC pursuant to its Regulation 30-11. Op. S.C. Att’y Gen., 2017 WL 569547 (Jan. 31, 2017).

P. 67 SECTION 4-9-60: ELECTION OR APPOINTMENT OF AUDITOR AND TREASURER

ATTORNEY GENERAL’S OPINIONS

Under a council-manager form of government, § 4-9-860 provides that county treasurers and county auditors may be appointed or elected. However, one position cannot be elected while the other position is appointed. Both the treasurer and auditor positions serve four-year terms which

commence at the same time. They can be suspended or removed from office in the same manner and their duties overlap. In all other forms of county government such as council, council-supervisor, and council-administrator, § 4-9-60 provides that both the county treasurer and the county auditor positions must be elected and officials serving unexpired terms shall continue to serve until successors are elected and qualify. Op. S.C. Att’y Gen., 2021 WL 2255341 (May 20, 2021).

All elected officials, including county auditors, must constitute qualified electors, meaning that they must be registered to vote in the area they intend to represent. Moreover, this requirement must be maintained throughout the official's term of office and the failure to do so results in a vacancy or forfeiture of the office. Once a county auditor is deemed to have vacated or forfeited his or her office, that individual may continue to serve in a *de facto* capacity until his or her successor is appointed or elected. The Governor also has the authority to appoint someone should a vacancy in the auditor position occur. In the alternative, if the auditor has a deputy, he or she could assume the auditor's duties until the next auditor takes office, if the Governor chooses not to appoint someone to fill the vacancy. Op. S.C. Att’y Gen., 2020 WL 7862620, (Dec. 17, 2020).

P. 70 SECTION 4-9-70: PUBLIC SCHOOL EDUCATION AND COUNTY COUNCIL

ATTORNEY GENERAL’S OPINIONS

By enacting § 4-9-70, the General Assembly clearly intended to vest the power to determine the school tax levy in county council in all cases where it is not vested elsewhere. Op. S.C. Att’y Gen., 2015 WL 8773706 (November 24, 2015).

Under § 4-9-70, unless otherwise provided by law, county council sets the school tax millage. Section 5-7-300 provides that a municipality may impose a late penalty if the county, with whom the municipality has contracted to collect the property tax, has not collected a late penalty. However, without separate authorization for a school district to charge a late penalty, the county must collect the late penalties on the tax bill through authorization given to a county treasurer under § 12-45-180. Op. S.C. Att’y Gen., 2014 WL 3414950 (July 3, 2014).

P. 72 SECTION 4-9-80: SPECIAL PURPOSE DISTRICTS AND COUNTY COUNCILS

CASE NOTES

The Home Rule Act does not affect the General Assembly’s authority, as granted under Section 7 of Art. VIII of the South Carolina Constitution, to enact general laws governing existing special purpose districts. *Weaver v. Recreation Dist.*, No. 2019-000920, 2020 WL 5224473 (S.C. Sept. 2, 2020).

ATTORNEY GENERAL'S OPINIONS

The Home Rule Act does not require special purpose districts located only within one county to perform functions by and under the supervision of the county. Op. S.C. Att'y Gen., 2018 WL 7501573 (March 8, 2018).

The Home Rule Act does not specifically overrule Chapter 11 of Title 6 as it relates to special purpose districts and therefore does not implicitly repeal it. Op. S.C. Att'y Gen., 2016 WL 2764103 (May 3, 2016).

P. 75 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 Special Purpose Districts (SPD). This section has no direct bearing on county government except as potential transferees of SPD assets.]

Act No. 14 of 2015 amended § 4-9-82. This Act adds § 4-9-82(F) to provide that the provisions of this code section do not apply to transactions where the district leases any or all of its real property even if the transaction also includes the sale or lease of other assets. The Act further amends § 4-9-82(C) to provide that a referendum is not required if the hospital owns or controls less than 145 beds, as opposed to the previous threshold of 130 beds.

§ 4-9-82. Transfer by hospital public service districts of assets, properties and responsibilities for 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 forty-five 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.

(F) Notwithstanding any other provision of law, the provisions of this section do not apply to any transaction that includes the hospital public service district's entry into a lease of any or all of its real property associated with the delivery of hospital services regardless of:

(1) the length of the term of the real property lease; or

(2) whether or not the transaction also includes the sale or lease of other assets of the district.

HISTORY: 1987 Act No. 93 § 2; 1999 Act No. 94; 2015 Act No. 14

P. 79 SECTION 4-9-90: COUNTY COUNCIL ELECTIONS

ATTORNEY GENERAL'S OPINIONS

If a county council incumbent "holds over" past the end of his term, he is a de facto officer. The

incumbent's de facto status terminates upon a successor's election and qualification to that seat. This "hold over" status does not affect the term of office; it merely shortens the successor's tenure in office. Op. S.C. Att'y Gen., 2014 WL 7505271 (Dec. 23, 2014).

Though § 4-9-90 provides that council member terms commence on January 2nd, under the council-administrator form of government, terms commence on January 1st. If a county council incumbent "holds over" past the end of his term, he is a de facto officer. The incumbent's de facto status terminates upon a successor's election and qualification to that seat. This "hold over" status does not affect the term of office; it merely shortens the successor's tenure in office. Op. S.C. Att'y Gen., 2014 WL 7505271 (Dec. 23, 2014). *[EDITOR'S NOTE: Section 4-9-90 specifies January first as the beginning of a county council term, but §§ 4-9-610 and 4-9-810 specify the second of January for the council-administrator and council-manager forms of government.]*

Under the council-administrator form of government, commencement of a county council term is January first after the election, as opposed to the second. Op. S.C. Att'y Gen., 1976 WL 23022 (July 26, 1976). *[EDITOR'S NOTE: Section 4-9-90 specifies January first as the beginning of a county council term, but §§ 4-9-610 and 4-9-810 specify the second of January for the council-administrator and council-manager forms of government.]*

P. 82 SECTION 4-9-100: COUNTY COUNCIL: DUAL OFFICE HOLDING AND SALARY INCREASES

ATTORNEY GENERAL'S OPINIONS

Section 4-9-100 allows county councils to change their own salaries so long as they do so by ordinance and the salary change does not take effect until the terms of at least two members elected at the next general election commence. While this Office recognizes Section 4-9-100 does not require a separate and distinct ordinance for a salary change, it does require action on the part of the council and a clear indication of a change in the council members' salaries. The ordinance presented in your letter indicates Beaufort County Council members would receive a cost-of-living increase based on whether county employees receive a cost-of-living increase pursuant to the county's annual budget. Although County Council would have to take action to approve the budget on an annual basis, we are concerned that such action would not satisfy the requirement that County Council clearly indicate they are changing their own salaries. We are also concerned that such an ordinance would amount to an automated increase because the approval of a cost-of-living increase for county employees automatically triggers an increase for County Council members. As such, we believe the ordinance as proposed may be in conflict with Section 4-9-100. 2022 WL 16841449 (Sept. 28, 2022).

The position of Animal Control Director is an employee rather than a public official; therefore, serving as both Animal Control Director and as a police officer does not constitute dual office holding. Op. S.C. Att'y Gen., 2019 WL 1644875 (March 27, 2019).

A county correctional officer is an office for dual office holding purposes, as he is a peace officer exercising a portion of the sovereign power of the state. Op. S.C. Att'y Gen., 2018 WL 1324039

(March 8, 2018).

County board of rescue squads is an office for dual office holding purposes because it exercises a portion of the sovereign power when it is given the discretionary power to determine the training required for each squad member in order to operate as an official rescue squad. The board of rescue squads was created by ordinance, its members are appointed to a specific term, and it has other indicia of an office. Op. S.C. Att’y Gen., 2017 WL 5203261 (Oct. 31, 2017).

Serving on the county archives commission would not likely be deemed an office for dual office holding purposes because it appears that council did not grant any powers or duties to indicate the commission is exercising some part of the sovereign power of the State. Op. S.C. Att’y Gen., 2017 WL 1017490, (Feb. 21, 2017).

Simultaneously serving as a member of county council and as a recycling coordinator for that same county would likely not violate the dual office holding provisions of § 4-9-100, as a court would likely not find the former is an office “for honor or profit.” However, this could be a potential master-servant conflict prohibited by common law. Op. S.C. Att’y Gen., 2016 WL 354857 (June 14, 2016).

A dual office holding situation would exist if a person were to serve simultaneously as a member of county council and as a member of a County Aeronautics and Economic Development Commission. However, it did not exist in this instance as the officer was serving in an ex officio capacity on the Commission. Op. S.C. Att’y Gen., 2014 WL 1398598 (Feb. 3, 2014).

State law likely prohibits a county from using public funds to make cash payments directly to individual members of county council who elect not to participate in the group health insurance plan offered by the county. In this instance, the county made cash payments in lieu of making payments toward the premiums for the health insurance plan. The use of public funds to pay for the college tuition of individual council members is also inappropriate. Op. S.C. Att’y Gen., 2013 WL 3762704 (July 8, 2013).

P. 86 SECTION 4-9-110: COUNCIL CHAIRMAN AND OTHER OFFICERS REQUIRED

CASE NOTES

The rules of procedure adopted by council were silent on the effect of an absence of a quorum but specified the latest edition of Robert’s Rules of Order as a gap filler when their rules were silent on a point. Therefore, any vote taken in the absence of a quorum is void. When a member is disqualified because of a conflict of interest, he cannot be counted for purposes of a quorum. However, a member who properly abstains and remains present is counted toward the presence of a quorum. *Anderson County v. Preston*, 420 S.C. 546, 556, 804 S.E.2d 282, 287 (Ct. App. 2017), cert. granted (Mar. 29, 2018), vacated, 427 S.C. 529, 831 S.E.2d 911 (2019).

ATTORNEY GENERAL'S OPINIONS

Section 4-9-110 requires county councils to hold publicly noticed meetings at least once in each and every calendar month. Op. S.C. Att'y Gen., 2019 WL 3243868 (July 2, 2019).

There is no statute which dictates the operating procedures of county councils, including the structure of standing committees. The power of a county council is plenary in this regard. The council may abolish, suspend, modify, or waive its own rules. This may be done by implication, when an action is taken not in accordance therewith. Op. S.C. Att'y Gen., 2017 WL 4707547 (Oct. 9, 2017); *aff'd.*, Op. S.C. Att'y Gen., 2018 WL 6815523 (December 13, 2018).

Section 6-1-330 establishes a floor for the number of votes required to approve a uniform service charge pursuant to § 4-9-30(5) and absent a statutory directive to the contrary, the county has the authority to require a super majority vote for enactment of ordinances. Op. S.C. Att'y Gen., 2017 WL 1095386 (March 14, 2017).

Section 5-7-250 (a provision for municipal councils similar to § 4-9-110) read with § 30-4-70(d), providing that the FOIA does not prohibit the removal of any person who willfully disrupts a meeting to the extent that orderly conduct of the meeting is seriously compromised, allow a council to discipline a member by removing them from a meeting as an inherent legislative power. Op. S.C. Att'y Gen., 2016 WL 3355910 (May 31, 2016).

A local government may choose to have a board of architectural review, to not have a board of architectural review, or to discontinue an already established board of architectural review. If the county discontinues its board of architectural review after they already established one by ordinance, they must follow their rules of governance in dissolving the board or complying with any ordinances they have in addition to any statutory requirements. Op. S.C. Att'y Gen., 2013 WL 5572750 (Oct. 2, 2013).

P. 88 SECTION 4-9-120: PROCEDURE FOR ADOPTION OF ORDINANCES

CASE NOTES

The vote of a member who has been disqualified because of interest or bias in the subject matter being voted upon may not be counted in the majority necessary for valid action. A court may invalidate an ordinance if the requisite number of votes to pass the ordinance would not exist but for the improper vote. *Anderson County v. Preston*, 420 S.C. 546, 556, 804 S.E.2d 282, 287 (Ct. App. 2017), cert. granted (Mar. 29, 2018), vacated, 427 S.C. 529, 831 S.E.2d 911 (2019).

ATTORNEY GENERAL'S OPINIONS

Section 6-1-330 establishes a floor for the number of votes required to approve a uniform service charge pursuant to § 4-9-30(5) and absent a statutory directive to the contrary, the county has the

authority to require a super majority vote for enactment of ordinances. Op. S.C. Att’y Gen., 2017 WL 1095386, (March 14, 2017).

P. 91 SECTION 4-9-130: PUBLIC HEARINGS, ADOPTION OF STANDARD CODES, AND EMERGENCY ORDINANCES

ATTORNEY GENERAL’S OPINIONS

Emergency ordinances passed by a County Council must conform to state law governing emergency county ordinances set out in § 4-9-130. Moreover, South Carolina law expressly charges local governments with a duty to prepare for emergencies and outlines responsibilities that county and municipal governments must undertake pursuant to § 25-1-450. Op. S.C. Att’y Gen., 2020 WL 4730385 (Aug. 6, 2020). *[EDITOR’S NOTE: This opinion also reaffirms that “local governments cannot exercise the emergency powers delegated to the Governor by the General Assembly” in S.C. Code Ann. § 25-1-440 as discussed in Op. S.C. Att’y Gen., 2020 WL 2044370 (Mar. 29, 2020) concerning the extraordinary powers of the Governor during a State of Emergency.]*

Section 4-9-130 applies to a ground lease and any party which contracts with a public body is charged with the knowledge of the county’s limitations and restrictions in making contracts. Any conveyance of public property or use of public funds must serve a public purpose. The holding of a public hearing is mandatory and, left uncured, could invalidate the lease. Op. S.C. Att’y Gen., 2016 WL 4917034 (Sept. 1, 2016).

P. 93 SECTION 4-9-140: BUDGETS, APPROPRIATIONS AND TAXES

ATTORNEY GENERAL’S OPINIONS

Pursuant to Section 7(b) of Art. X of the South Carolina Constitution and Section 4-9-140, state law requires the County to adopt a budget prior to the start of its fiscal year on July 1. If the County fails to adopt a budget, it may be prohibited from expending county funds until it adopts a budget. Op. S.C. Att’y Gen., 2021 WL 2906088 (June 30, 2021).

County Council has both the authority and the responsibility to make appropriations sufficient for the proper funding of the sheriff’s department. Council may not use its budgetary authority to interfere with the operating decisions of the sheriff’s department. Once County Council adopts a budget, expenditures over this amount could be viewed by a court as unlawful in violation of both the budget ordinance and Section 8 of Art. X of the South Carolina Constitution. If a court finds a Sheriff acted negligently in expending funds over the amount appropriated, he or she could be held personally liable. Op. S.C. Att’y Gen., 2020 WL 5259200 (Aug. 17, 2020).

The county does not have the authority to adopt an ordinance or resolution to prevent a county registration and elections board (“Board”) from paying legal fees, settlements, and judgements out

of county funds appropriated to the Board, as it would be inconsistent with general law of the State. Op. S.C. Att’y Gen., 2017 WL 6629070 (Dec. 18, 2017). [EDITOR’S NOTE: The SCAC legal staff disagrees with this opinion, believing that the Attorney General did not recognize the difference between county appropriated funds versus other funds of the Board. In Op. S.C. Att’y Gen., 2004 WL 439326 (Feb. 23, 2004), the Attorney General opined that a county could audit the solicitor’s county appropriated funds, but not the pre-trial intervention funds which were statutorily created. In addition, *Gilstrap v. Budget and Control Bd.*, 310 S.C. 210 (1992) and *Bauer v. S.C. State Housing Auth.*, 271 S.C. 219, 246 S.E.2d 869 (1978) hold that appropriation of public funds is a legislative function and may not be delegated to an administrative body. If the county funds were appropriated for a specific purpose, the Board could only use those funds for the designated purpose.]

A properly passed budget ordinance has the force of law. Expenditures in excess of the budgeted amount is an unlawful act and public officials who mispend public funds may be held personally liable under the “due care” standard. Prosecutors have charged public officials with misconduct in office for such actions. Op. S.C. Att’y Gen., 2016 WL 3946153 (July 5, 2016).

P. 96 SECTION 4-9-145: CODE ENFORCEMENT OFFICERS

ATTORNEY GENERAL’S OPINIONS

County vehicles used by county code enforcement officers primarily for law enforcement purposes, such as animal control officers, county fire code officials, and county building code officials are allowed to use or display blue or red lights on their county vehicles. However, the personal vehicle of a campus police officer cannot be construed as one which is used primarily for law enforcement purposes and is thus prohibited from utilizing or displaying blue lights. Op. S.C. Att’y Gen., 2013 WL 4397079 (Aug. 6, 2013).

P. 99 SECTION 4-9-150: AUDITS OF COUNTY RECORDS

CASE NOTES

A negligent auditing claim based upon § 4-9-150 is barred by the public duty rule. Section 4-9-150 creates no duty of care towards an individual member of the public. *The Bank of New York v. Sumter County*, S.C. Com.Pl. 2016 (2016 WL 3949851).

P. 102 SECTION 4-9-170: APPOINTIVE POWERS OF COUNCIL FOR BOARDS, ETC.

ATTORNEY GENERAL’S OPINIONS

In conclusion, Jasper County has the right to enact ordinances bringing a county agency, board, or commission under its control. Pursuant to sections 4-9-30(6) and 4-9-170, Jasper County has

the power to enact ordinances establishing, regulating, and modifying a county board or commission. Jasper County is also authorized to enact ordinances prescribing the function of and providing for the appointment of the members of a county board or commission pursuant to these statutes. We have previously explained that “our courts consistently recognize local ordinances are presumed valid unless and until a court declares them to be invalid.” Op. S.C. Att’y Gen., 2021 WL 3703908 (Aug. 3, 2021). Therefore, any ordinance passed by Jasper County Council is presumed valid unless and until a court rules otherwise. Although the Jasper County Aeronautics Commission has many of the characteristics of a county agency, it is not entirely free from doubt, given the fact that our courts have reached seemingly conflicting conclusions regarding airport commissions. Therefore, we believe the wisest course of action would be to petition a court for a declaratory judgment to determine the status of the Commission as either a political subdivision or special purpose district or as a post-Home Rule agency of the county. Op. S.C. Att’y Gen., 2023 WL 3034524, (Apr. 13, 2023).

Section 59-53-229 vests the appointment of the Pickens County member of the Tri-County Technical College board in the legislative delegation, as a specific statute survives the passage of the Home Rule Act. The general provision of Act No. 280 of 1971 giving general appointment authority to county council does not survive the passage of the Home Rule Act. Moreover, appointment power over a TEC board is not a county function, but instead relates to education and belongs to the General Assembly pursuant to Art. XI, § 3. Op. S.C. Att’y Gen., 2016 WL 3023692 (May 12, 2016).

P. 104 SECTION 4-9-180: CONFLICTS OF INTEREST

CASE NOTES

The vote of a member who has been disqualified because of interest or bias in the subject matter being voted upon may not be counted in the majority necessary for valid action. A court may invalidate an ordinance if the requisite number of votes to pass the ordinance would not exist but for the improper vote. *Anderson County v. Preston*, 420 S.C. 546, 556, 804 S.E.2d 282, 287 (Ct. App. 2017), cert. granted (Mar. 29, 2018), vacated, 427 S.C. 529, 831 S.E.2d 911 (2019). [EDITOR’S NOTE: *This opinion did not specifically address § 4-9-180, but the same result could easily be reached. Additionally, this opinion was vacated by the SC Supreme Court on August 7, 2019, based upon the Court of Appeals not consisting of a quorum when the decision was rendered; however, the new holding and reasoning remains the same.*]

The rules of procedure adopted by council were silent on the effect of an absence of a quorum but specified the latest edition of Robert’s Rules of Order as a gap filler when the rules were silent on a point. Therefore, any vote taken in the absence of a quorum is void. When a member is disqualified because of a conflict of interest, he cannot be counted for purposes of a quorum. However, a member who properly abstains and remains present is counted toward the presence of a quorum. *Anderson County v. Preston*, 420 S.C. 546, 556, 804 S.E.2d 282, 287 (Ct. App. 2017), cert. granted (Mar. 29, 2018), vacated, 427 S.C. 529, 831 S.E.2d 911 (2019). [EDITOR’S NOTE: *This opinion did not specifically address § 4-9-180, but the same result could easily be reached.*]

Additionally, this opinion was vacated by the SC Supreme Court on August 7, 2019, based upon the Court of Appeals not consisting of a quorum when the decision was rendered; however, the new holding and reasoning remains the same.]

P. 109 SECTION 4-9-195: SPECIAL TAX ASSESSMENTS FOR REHABILITATED HISTORIC PROPERTIES AND LOW AND MODERATE INCOME RENTAL PROPERTY

ATTORNEY GENERAL'S OPINIONS

When a city offers a special assessment pursuant to § 5-21-140, which confers on the city the same authority given counties in § 4-9-195, the special assessment would only apply to the portion of the taxes belonging to the city. Op. S.C. Att'y Gen., 2017 WL 456088 (Jan. 4, 2017).

PART II

**PROVISIONS THAT APPLY TO INDIVIDUAL
FORMS OF GOVERNMENT**

ARTICLE 3: COUNCIL FORM OF COUNTY GOVERNMENT

P. 114 SECTION 4-9-310: COUNTY COUNCIL RESPONSIBILITIES

CASE NOTES

The county supervisor has no authority over employees of either the treasurer or probate judge. *Burrows v. Williamsburg Cnty.*, D. S.C. June 30, 2015 (2015 WL 3967116). *[EDITOR'S NOTE: Although this case speaks to the council-supervisor form of government, the general result would be applicable here as well.]*

ATTORNEY GENERAL'S OPINIONS

An individual can serve as both the County Administrator for Allendale County and the Town Administrator for the Town of Olar without violating the dual office holding prohibition of the South Carolina Constitution and pursuant to Section 4-9-310. Only a court can determine with any certainty if a conflict of interest exists when an individual serves simultaneously as Allendale County Administrator and as Olar Town Administrator. However, a consideration is that both of these positions act at the direction of their respective councils. Please contact the State Ethics Commission to confirm that there are not any violations of the ethics laws. Further, please confirm that Allendale County and the Town of Olar do not have any internal policies which would prevent an individual from serving in both positions. Op. S.C. Att'y Gen., 2023 WL 3931547 (June 2, 2023).

A county auditor is only responsible for statutory duties and those duties prescribed by the Department of Revenue. No public official or person may interfere with the statutory duties of a county auditor. Op. S.C. Att'y Gen., 2017 WL 6548005 (Dec. 5, 2017). *[EDITOR'S NOTE: Although this speaks to the council-administrator form of government, the general result would be applicable in this form of government as well.]*

The clerk of court has exclusive use of bail bondsman fees pursuant to § 38-53-100 and the administrator has no authority to control the expenditure of those funds. However, the clerk must comply with county accounting, procurement and reporting systems and submit annual fiscal reports as these are "organizational policies" that are excepted from the general rule stated in § 4-9-650. While not "county funds," the bail bondsman fees are "public funds." Public funds may not be used to pay compensation greater than what the entity has a contractual or legal obligation to

provide, as part of an employee bonus program. Perhaps contractual incentives could reward continuous hard work, but § 8-15-10 giving county council the authority to set compensation of county officers and employees would also have to be taken into account. Op. S.C. Att’y Gen., 2017 WL 2601033 (June 5, 2017). *[EDITOR’S NOTE: Although this speaks to the council-administrator form of government, the general result would be applicable in this form of government as well.]*

ARTICLE 5: COUNCIL-SUPERVISOR FORM OF GOVERNMENT

P. 117 SECTION 4-9-420: POWERS AND DUTIES OF THE SUPERVISOR

ATTORNEY GENERAL’S OPINIONS

The supervisor is given the duty to supervise the expenditure of funds appropriated by council. When council properly enunciates policy, the supervisor’s only function is to carry out such policies. If a supervisor spends public money in a manner contrary to a county ordinance, then he has acted illegally by exceeding that authority. In the instance of overspending, the supervisor may be personally liable under the “due care” standard. Prosecutors have charged public officials with misconduct in office for such actions. Op. S.C. Att’y Gen., 2016 WL 3946153 (July 5, 2016).

P. 118 SECTION 4-9-430: SUPERVISOR’S AUTHORITY AND COUNTY OFFICIALS

CASE NOTES

The county supervisor has no authority over employees of the treasurer or the probate judge. *Burrows v. Williamsburg Cnty.*, D. S.C. June 30, 2015 (2015 WL 3967116).

ATTORNEY GENERAL’S OPINIONS

The clerk of court has exclusive use of bail bondsman fees pursuant to § 38-53-100 and the administrator has no authority to control the expenditure of those funds. However, the clerk must comply with county accounting, procurement and reporting systems and submit annual fiscal reports as these are “organizational policies” that are excepted from the general rule stated in § 4-9-650. While not “county funds,” the bail bondsman fees are “public funds.” Public funds may not be used to pay compensation greater than what the entity has a contractual or legal obligation to provide, as part of an employee bonus program. Perhaps contractual incentives could reward continuous hard work, but § 8-15-10 giving county council the authority to set compensation of county officers and employees would also have to be taken into account. Op. S.C. Att’y Gen., 2017 WL 2601033 (June 5, 2017). *[EDITOR’S NOTE: Although this speaks to the council-administrator form of government, the general result would be applicable in this form of government as well.]*

ARTICLE 7: COUNCIL-ADMINISTRATOR FORM OF GOVERNMENT

P. 119 SECTION 4-9-610: COUNTY COUNCIL ORGANIZATIONAL REQUIREMENTS ATTORNEY GENERAL'S OPINIONS

Though § 4-9-90 provides that council member terms commence on January 2nd, under the council-administrator form of government, terms commence on January 1st. If a county council incumbent “holds over” past the end of his term, he is a de facto officer. The incumbent’s de facto status terminates upon a successor’s election and qualification to that seat. This “hold over” status does not affect the term of office; it merely shortens the successor’s tenure in office. Op. S.C. Att’y Gen., 2014 WL 7505271 (Dec. 23, 2014). *[EDITOR’S NOTE: Section 4-9-90 specifies January first as the beginning of a county council term, but §§ 4-9-610 and 4-9-810 specify the second of January for the council-administrator and council-manager forms of government.]*

Under the council-administrator form of government, commencement of a county council term is January first after the election, as opposed to the second. Op. S.C. Att’y Gen., 1976 WL 23022 (July 26, 1976). *[EDITOR’S NOTE: Section 4-9-90 specifies January first as the beginning of a county council term, but §§ 4-9-610 and 4-9-810 specify the second of January for the council-administrator and council-manager forms of government.]*

P. 121 SECTION 4-9-620: EMPLOYMENT AND REMOVAL OF ADMINISTRATORS ATTORNEY GENERAL'S OPINIONS

While § 4-9-620 provides that the administrator is to be in charge of all departments “controlled” by the county council, § 4-9-35 empowers the library board of trustees to “control and manage” the county library system. Because the library system involves a statewide function and is “controlled” by the board, it is not a department within county council’s control. Thus, in the county-administrator form of government, the county does not have the authority to force the library board of trustees to report to the administrator Op. S.C. Att’y Gen., 2014 WL 3886690 (July 28, 2014). *[EDITOR’S NOTE: This opinion modifies a previous opinion (Op. S.C. Att’y Gen., 2014 WL 1284637 (March 27, 2014)).]*

While county council can control the board of library trustees, the county administrator has the authority to manage the board. Therefore, the board is accountable to and must report to the administrator. Op. S.C. Att’y Gen., 2014 WL 1284637 (March 27, 2014). *[EDITOR’S NOTE: A subsequent Attorney General’s opinion (Op. S.C. Att’y Gen., 2014 WL 3886690 (July 28, 2014)) provides that the board is not accountable to the county administrator.]*

P. 123 SECTION 4-9-630: POWERS AND DUTIES OF THE ADMINISTRATOR

ATTORNEY GENERAL'S OPINIONS

The supervisor is given the duty to supervise the expenditure of funds appropriated by council. When council properly enunciates policy, the supervisor's only function is to carry out such policies. If a supervisor spends public money in a manner contrary to a county ordinance, then he has acted illegally by exceeding that authority. In the instance of overspending, the supervisor may be personally liable under the "due care" standard. Prosecutors have charged public officials with misconduct in office for such actions. Op. S.C. Att'y Gen., 2016 WL 3946153 (July 5, 2016). *[EDITOR'S NOTE: This opinion addresses the council-supervisor form of government, but the general principle would apply in this form as well.]*

P. 125 SECTION 4-9-650: ADMINISTRATOR'S AUTHORITY AND COUNTY OFFICIALS

CASE NOTES

The county supervisor has no authority over employees of either the treasurer or probate judge. *Burrows v. Williamsburg Cnty.*, D. S.C. June 30, 2015 (2015 WL 3967116). *[EDITOR'S NOTE: Although this case speaks to the council-supervisor form of government, the general result would be applicable here as well.]*

ATTORNEY GENERAL'S OPINIONS

A county auditor is only responsible for his or her statutory duties and those duties prescribed by the Department of Revenue. No public official or person may interfere with the statutory duties of a county auditor. Op. S.C. Att'y Gen., 2017 WL 6548005 (Dec. 5, 2017).

The clerk of court has exclusive use of bail bondsman fees pursuant to § 38-53-100 and the administrator has no authority to control the expenditure of those funds. However, the clerk must comply with county accounting, procurement and reporting systems and submit annual fiscal reports as these are "organizational policies" that are excepted from the general rule stated in § 4-9-650. While not "county funds," the bail bondsman fees are "public funds." Public funds may not be used to pay compensation greater than what the entity has a contractual or legal obligation to provide, as part of an employee bonus program. Perhaps contractual incentives could reward continuous hard work, but § 8-15-10 giving county council the authority to set compensation of county officers and employees would also have to be taken into account. Op. S.C. Att'y Gen., 2017 WL 2601033 (June 5, 2017).

ARTICLE 9: COUNCIL-MANAGER FORM OF GOVERNMENT

P. 128 SECTION 4-9-810: COUNTY COUNCIL ORGANIZATIONAL REQUIREMENTS

ATTORNEY GENERAL'S OPINIONS

Though § 4-9-90 provides that council member terms commence on January 2nd, under the council-administrator form of government, terms commence on January 1st. If a county council incumbent “holds over” past the end of his term, he is a de facto officer. The incumbent’s de facto status terminates upon a successor’s election and qualification to that seat. This “hold over” status does not affect the term of office; it merely shortens the successor’s tenure in office. Op. S.C. Att’y Gen., 2014 WL 7505271 (Dec. 23, 2014). *[EDITOR’S NOTE: Section 4-9-90 specifies January first as the beginning of a county council term, but §§ 4-9-610 and 4-9-810 specify the second of January for the council-administrator and council-manager forms of government.]*

Under the council-administrator form of government, commencement of a county council term is January first after the election, as opposed to the second. Op. S.C. Att’y Gen., 1976 WL 23022 (July 26, 1976). *[EDITOR’S NOTE: Section 4-9-90 specifies January first as the beginning of a county council term, but §§ 4-9-610 and 4-9-810 specify the second of January for the council-administrator and council-manager forms of government.]*

P. 130 SECTION 4-9-830: POWERS AND DUTIES OF MANAGER

ATTORNEY GENERAL'S OPINIONS

The supervisor is given the duty to supervise the expenditure of funds appropriated by council. When council properly enunciates policy, the supervisor’s only function is to carry out such policies. If a supervisor spends public money in a manner contrary to a county ordinance, then he has acted illegally by exceeding that authority. In the instance of overspending, the supervisor may be personally liable under the “due care” standard. Prosecutors have charged public officials with misconduct in office for such actions. Op. S.C. Att’y Gen., 2016 WL 3946153 (July 5, 2016). *[EDITOR’S NOTE: This opinion addresses the council-supervisor form of government, but the general principle would apply in this form as well.]*

P. 131 SECTION 4-9-850: MANAGER’S AUTHORITY AND COUNTY OFFICIALS

CASE NOTES

The county supervisor has no authority over employees of either the treasurer or probate judge. *Burrows v. Williamsburg Cnty.*, D. S.C. June 30, 2015 (2015 WL 3967116). *[EDITOR’S NOTE: Although this case speaks to the council-supervisor form of government, the general result would be applicable here as well.]*

ATTORNEY GENERAL'S OPINIONS

A county auditor is only responsible for his or her statutory duties and those duties prescribed by the Department of Revenue. No public official or person may interfere with the statutory duties of a county auditor. Op. S.C. Att'y Gen., 2017 WL 6548005 (Dec. 5, 2017). *[EDITOR'S NOTE: Although this speaks to the council- administrator form of government, the general result would be applicable in this form of government for at least a popularly elected auditor.]*

The clerk of court has exclusive use of bail bondsman fees pursuant to § 38-53-100 and the administrator has no authority to control the expenditure of those funds. However, the clerk must comply with county accounting, procurement, reporting systems and annual fiscal reports as these are "organizational policies" that are excepted from the general rule stated in § 4-9-650. While not "county funds," the fees are "public funds" and may not be used to pay compensation greater than what the entity has a contractual or legal obligation to provide. Perhaps incentives could reward continuous hard work, but § 8-15-10 giving county council the authority to set compensation would have to be taken into account. Op. S.C. Att'y Gen., 2017 WL 2601033 (June 5, 2017). *[EDITOR'S NOTE: Although this speaks to the council-administrator form of government, the general result would be applicable in this form of government as well.]*



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