

The State of South Carolina

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Office of the Attorney General

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June 11, 1990

The Honorable Edwin M. Davis  
Judge of Probate, Chesterfield County  
Chesterfield County Courthouse  
Chesterfield, South Carolina 29709

Dear Judge Davis:

By your letter of June 5, 1990, you have advised that Chesterfield County Council voted to eliminate a staff position from the office of Probate Judge of Chesterfield County in its second reading of the 1990-91 budget. You have asked for the opinion of this Office whether Chesterfield County Council has the authority to do so.

Funding for the office of probate judge is provided for in at least two statutes. Section 14-23-1030 of the South Carolina Code of Laws (1976 & 1989 Cum. Supp.) permits a probate judge to appoint one or more associate judges if the county governing body appropriates funds therefor. Section 14-23-1130 sets forth the following:

The governing body of each county shall provide and the judge of probate shall keep the seal of the court, the necessary office equipment of the court, and those books [as specified in the statute]:

....

In addition, the governing body of each county shall provide office space and additional support personnel necessary for the orderly conduct of the business of the probate court. [Emphasis added.]

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In construing statutes such as these, the primary objective of the courts and this Office is to ascertain and effectuate legislative intent insofar as is possible. Arkwright Mills v. Murph, 219 S.C. 438, 65 S.E.2d 665 (1951). In so doing, courts will use the plain and ordinary meanings of words used in a statute, Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980), and will apply such language literally in the absence of ambiguity. State v. Goolsby, 278 S.C. 52, 292 S.E.2d 180 (1982). The term "shall" is generally regarded as mandatory. S. C. Wildlife Federation v. Alexander, 457 F.Supp. 118 (D.S.C. 1978).

Applying these rules of statutory construction, it appears that provision of funds for one or more associate judges of probate is within the discretion of a county council, as the term "shall" is not used in Section 14-23-1030 in conjunction with funding. By Section 14-23-1130, a county council is mandated to provide a seal, office equipment, specified books, office space, and "additional support personnel necessary for the orderly conduct of the business of the probate court." The statute does not specify further how to determine the number of support personnel needed for orderly conduct of the court or who is to make the determination. The number of support personnel needed for the orderly conduct of the court would involve a factual question rather than a legal question and thus is outside the scope of an opinion of this Office. Op. Atty. Gen. dated December 12, 1983.

This Office has examined the issue of budgetary authority and limitations of a county council vis a vis the operations of an office headed by an elected official at the county level. Enclosed are opinions of this Office dated February 7, 1978, February 22, 1985; and August 14, 1985. In the opinion of February 7, 1978, this Office noted:

With reference to budgetary matters, while it is true that the Council exercises totally the budgetary authority of Aiken County and, consequently, can decrease, increase or otherwise alter appropriations for specific county offices and functions ..., nevertheless, it cannot so decrease the appropriations of an elected official's office as to prevent the proper functioning thereof and, thus, indirectly, to abolish that official's office. [Cites omitted.] Whether or not the Council has, in any particular instance, exercised its budgetary authority so as to interfere with or prevent the proper functioning of an elected official's office is a factual matter which cannot be determined by this office. [Cites omitted.]

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I trust that these enclosed opinions will be helpful.

To respond to your question, a county council must provide the probate court funds for those things listed in the above-cited statutes. Whether the elimination of funding for a staff position from your office's appropriation would impair the orderly conduct of the business of the probate court is a question of fact which cannot be determined by an opinion of this Office.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

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Assistant Attorney General

PDP/an

Enclosures

REVIEWED AND APPROVED BY:

*Robert D. Cook*

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