



ALAN WILSON
ATTORNEY GENERAL

May 6, 2011

Randy Floyd, Vice Chairman
Marion County Library Board of Trustees
101 East Court Street
Marion, South Carolina 29571

Dear Mr. Floyd:

We received your letter requesting an opinion of this Office concerning the ability of the Marion County Library Board of Trustees (the "Board") to "sponsor a single issue voter referendum on raising property taxes to expand and renovate [its] three county library facilities."

Law/Analysis

Section 4-9-35 of the South Carolina Code (1986) calls for county councils to establish county public library systems.

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 provision 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.

S.C. Code Ann. § 4-9-35(A). This provision also calls for the establishment of county public library boards of trustees to be appointed by the county councils. S.C. Code Ann. § 4-9-35(B).

Because county library boards are created by statute with the aid of county council's, they only possess the powers afforded to them by the Legislature and the county council. See

City of Newberry v. Newberry Elec. Co-op., Inc., 387 S.C. 254, 692 S.E.2d 510 (2010); Responsible Econ. Dev. v. South Carolina Dep't of Health and Env'tl. Control, 371 S.C. 547, 641 S.E.2d 425 (2007) (stating that creatures of statute only have the authority given to them by the Legislature). Therefore, we look first to the powers given to county library boards by the Legislature. Section 4-9-36 of the South Carolina Code (1986) lists the duties of county library boards. In addition, section 4-9-37 of the South Carolina Code (1986) lists some additional duties given to county library boards. Neither of these provisions gives county library boards the express ability to impose property taxes.

Section 4-6-36(9) states that county library boards may “[t]ake 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.” However, we do not believe this provision gives county library boards the implied authority to levy a tax. In Crow v. McAlpine, 277 S.C. 240, 243, 285 S.E.2d 355, 357 (1981), our Supreme Court explained: “The people of this State, in their sovereign capacity have, by the Constitution, entrusted the taxing power to the General Assembly and except by express permission of the sovereign authority, this power cannot be delegated to any subordinate agency.” (citing Gaud v. Walker, 214 S.C. 451, 53 S.E.2d 316 (1949)). The Legislature has not specifically given the Board the authority to levy a tax. Furthermore, although the Legislature gives county council’s the authority to pass ordinances specifying the “composition, function, duties, responsibilities, and operation of the county library system,” we do not believe that the Marion County Council can delegate its authority to levy taxes to the Board. Accordingly, we are of the opinion that the Board does not have the authority to raise property taxes to expand and renovate Marion County’s library facilities.

Moreover, it is our understanding that county councils are responsible for funding county libraries, not the county library boards. Section 4-9-39 of the South Carolina Code (Supp. 2010) provides:

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.

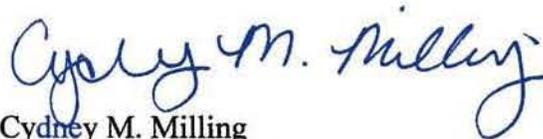
Section 4-9-37 of the South Carolina Code further explains that the county library board is responsible for submitting a budget annually to the county council. Although county library

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boards play a significant role in the budgetary process, State law clarifies that county council is responsible for county library funding. Therefore, the Marion County Council must make decisions regarding any increase in property taxes for the benefit of a county library.

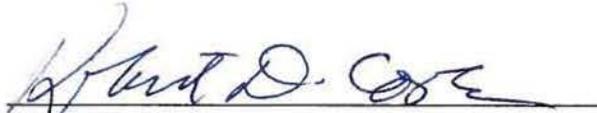
Based on our reading of the provisions contained in title 4, we believe the Board lacks authority to impose or increase property taxes for the benefit of the Marion County Library System. Accordingly, we do not believe the Board can legally sponsor a voter referendum for such an increase. Moreover, we also must note that section 4-9-1210 of the South Carolina Code (1986) prohibits voters from proposing an ordinance to increase property taxes by initiative. Therefore, we believe an increase in property taxes is solely within the authority of the Marion County Council.

Very truly yours,



Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General