

The State of South Carolina

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July 31, 1990

The Honorable Dill Blackwell
Member, House of Representatives
335-A Blatt Building
Columbia, South Carolina 29211

Dear Representative Blackwell:

You have asked for the opinion of this Office as to two questions. The question involving the recall of elected officials has been particularly difficult to resolve, and research is still underway on those issues.

Your other question referenced previous opinions of this Office construing Section 4-9-1210 et seq. of the South Carolina Code of Laws (1976), relative to the initiative and referendum process, and asked whether an initiative petition directed at limiting the power or authority of a county council to spend money, as distinguished from levying or collecting taxes, would be legal or authorized under current law. We think not.

Section 4-9-1210 provides in relevant part that "[t]he qualified electors of any county may propose any ordinance, except an ordinance appropriating money or authorizing the levy of taxes," This Office has opined previously that an initiative petition which would restrict the taxing power of a county council would not be authorized by Section 4-9-1210; such prohibition would include a proposal for an ordinance which would set a ceiling on county real property taxes. Ops. Atty. Gen. dated June 6, 1979 and August 9, 1979. These opinions were deemed to be inclusive of a proposed initiative petition which would prevent an increase in county taxes except upon approval of the electorate in the county involved. See letter of January 12, 1990 to the Honorable Dill Blackwell from Assistant Attorney General Patricia D. Petway.

Restricting a county's taxing power or setting a ceiling on county real property taxes would represent the means by which the end is reached. The end is the yearly budgetary or appropriation

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process. Article X, Section 7 (b) of the State Constitution provides that "[e]ach political subdivision of the State ... shall prepare and maintain annual budgets which provide for sufficient income to meet its estimated expenses for each year." Additionally, Article X, Section 5 of the State Constitution requires that any tax levied must distinctly state the public purpose for which the proceeds shall be expended. Section 4-9-140 of the Code further provides as to the county budgetary process:

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.

The plain meaning of the language in these provisions, which must be applied literally, Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980); State v. Goolsby, 278 S.C. 52, 292 S.E.2d 180 (1982), inextricably ties the levying of taxes to the process beforehand of determining for what public purposes taxes shall be levied and what level of taxation will be needed to carry out those purposes. Limiting the power or authority of a county council to spend money necessarily impacts on the council's authority to levy taxes, indirectly and effectively placing a ceiling on the level of taxes which may be levied. What cannot be done directly cannot then be done indirectly. State ex rel. Edwards v. Osborne, 193 S.C. 158, 7 S.E.2d 526 (1940); Lurey v. City of Laurens, 265 S.C. 217, 217 S.E.2d 226 (1975); Westbrook v. Hayes, 253 S.C. 244, 169 S.E.2d 775 (1969).

Based on the foregoing, it is the opinion of this Office that Section 4-9-1210 et seq. of the Code, relative to the initiative and referendum process, would not authorize an initiative petition directed at limiting the power or authority of a county council to spend money, as such is inextricably bound to the levy of taxes.

The foregoing opinion considers only the legal aspects of the issue you have raised. We necessarily express no opinion on the policy question of whether such a referendum on the limitation of spending public money would be appropriate. Such remains within the province of the legislative body (here, county council).

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With kindest regards, I am

Sincerely,

Patricia D. Petway

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Assistant Attorney General

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REVIEWED AND APPROVED BY:

Robert D. Cook

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