



ALAN WILSON
ATTORNEY GENERAL

March 27, 2014

Mr. Hulen E. Bivins
State Library Director
South Carolina State Library
PO Box 11469
Columbia, SC 29211

Dear Mr. Bivins:

This Office received your request for an opinion on several issues regarding the Beaufort County Library Board of Trustees. Each issue and its analysis follows.

LAW/ANALYSIS:

- I. **What is the proper legal role of the Beaufort County Library Board of Trustees? What are the issues on which the Trustees would be expected to report?**

In a prior opinion, we stated:

Because county library boards are created by statute with the aid of county councils, 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).

Op. S.C. Att'y Gen., 2011 WL 2214064 (May 6, 2011).

The Legislature has provided for all of the counties to establish a public library system and to have a governing board of trustees. Section 4-9-35 states:

- (A) Each county council shall prior to July 1, 1979, by ordinance establish within the county a county public library system, which ordinance shall be consistent with the provisions of this section; *provided*, however, notwithstanding any other 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 § 4-9-50¹ except as state funds are specifically appropriated under other provisions of law.

(B) Each county library system shall be controlled and managed by a board of trustees. . .appointed by the county council. . . .

S.C. Code Ann. § 4-9-35 (1976 Code, as amended).

All of the county library board of trustees were granted the following powers:

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

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

(2) Purchase, lease, hold and dispose of real and personal property in the name of the county for the exclusive use of the county public library system. *Provided*, however, any such conveyance, lease or purchase of real property shall be by the county governing body in accordance with the provisions of §§ 4-9-10 et seq. and §§ 5-1-10 et seq., as amended.

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

¹ Section 4-9-50 provides:

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

S.C. Code Ann. § 4-9-50 (1976 Code, as amended).

- (4) Accept donations of real property, services, books and other items suitable for use in the library system.
- (5) Designate or mark equipment, rooms and buildings, and other library facilities to commemorate and identify gifts and donations made to the library system.
- (6) Cooperate or enter into contracts or agreements with any public or private agency which results in improved services or the receipt of financial aid in carrying out the functions of the library system. *Provided*, however, such contracts and agreements shall be subject to approval by the governing body of the county.
- (7) Enter into contracts or agreements with other counties to operate regional or joint libraries and related facilities. *Provided*, however, such contracts and agreements shall be subject to approval by the governing body of the county.
- (8) Receive and expend grants, appropriations, gifts and donations from any private or public source for the operation, expansion or improvement of the library system.
- (9) Take any actions deemed necessary and proper by the board to establish, equip, operate and maintain an effective library system within limits of approved appropriations of county council.

S.C. Code Ann. § 4-9-36 (1976 Code, as amended).

All of the county library boards were granted further powers by section 4-9-37, which provides:

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

- (a) Provide and make available to the residents of the county books and library materials and in the fulfillment of this function shall establish a headquarters library and may establish branches and subdivisions thereof in appropriate geographical areas of the county within the limits of available funds. The board may operate one or more bookmobiles over routes determined by the board.
- (b) Adopt regulations necessary to insure effective operation, maintenance and security of the property of the library system. *Provided*, however, such regulations

shall not be in conflict with policy or regulations established by the county governing body.

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

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

S.C. Code Ann. § 4-9-37 (1976 Code, as amended).

Beaufort County has explained that “[t]he purpose of the library board is to guide and keep the county council informed in matters concerning the development of library services in the county” (Beaufort County Code of Ordinances § 50-31) and provided its Library Board of Trustees with the following duties:

- (1) Hire the chief librarian, upon advice and consent of the county administrator.
- (2) Recommend to the council the acquisition and disposal of property and facilities.
- (3) Establish written policies for the acquisition of books and other library materials for use throughout the county.
- (4) Accept from the public, on behalf of the council, donations of funds, services, books and other items suitable for use in the library's delivery of service.
- (5) Designate or mark equipment, rooms, buildings and other library facilities commemorating and identifying gifts and donations.
- (6) Develop and coordinate library services in the county through participation in the county library federation and other affiliates as may be appropriate.

(7) Review and recommend the library budget, as prepared by the chief librarian, for submission to the county administrator. This includes any and all other revenue sources consistent within the requirement of the funding source.

(8) Adopt regulations necessary to ensure effective operations, maintenance and security of the property of the library system; provided, however, such regulations shall not be in conflict with policy or regulations established by the council.

Beaufort County Code of Ordinances § 50-33.

Beaufort County also requires the following of its boards² and agencies:

(a) *Strategic plan.* Each board, agency or commission shall develop a comprehensive plan, as well as goals and objectives congruent with the strategic plan formulated and written by council, which shall have a scope of five years and shall contain specific, measurable and time-phased goals for the current budget year and four out-years. In addition, each board, agency or commission shall present the strategic plan to council annually as scheduled by the county administrator. The time period for compliance with the ordinance in this respect is six months after formulation, finalization and approval of the county's strategic plan.

² Beaufort County defines a “board” as “[a] group established by the Beaufort County Code of Ordinances or laws of the state of South Carolina to advise council and its staff in appropriate matters as set forth by its charter, and/or perform such other functions granted to the group by the enabling statute or ordinance and any amendments thereto.” Beaufort County Code of Ordinances § 2-192.

Beaufort County ordinances provide that “Council shall adopt for each [board and agency], as appropriate, a charter, which prescribes the purpose of each such group.” Beaufort County Code of Ordinances § 2-191. The ordinances explain that:

The Charter, as approved by council, shall be the controlling document of the board's, agency's or commission's activities, and its scope of responsibility; and establishes the relationship that both Beaufort County and board, agency or commission will nurture. This document will set the parameters of the board, agency or commission charged with full thrust.

Beaufort County Code of Ordinances § 2-198. The powers and duties in the Charter of the Beaufort County Library Board replicate the duties listed in section 50-33 of the Beaufort County ordinances.

(b) *Audience for public opinion.* Each board, agency, commission may act as the initial forum for public opinion in their specialized area, with responsibility to make recommendations and presentations to council for final judgment.

Beaufort County Code of Ordinances § 2-194.³

The South Carolina State Library plays a pertinent part in determining the role of library boards of trustees. Pursuant to statute, the director of the State Library has duties which include “provid[ing] advice and technical assistance to public and other libraries, agencies of the State, political subdivisions, and planning groups concerning library services and operations. . .” S.C. Code Ann. § 60-1-50(d) (1976 Code, as amended). The South Carolina Code also provides that:

The South Carolina State Library shall provide advice and assistance to public libraries, library boards, and county governments in matters concerning the establishment, support, operation, improvement, and coordination of library services. . . .

S.C. Code Ann. § 60-1-80 (1976 Code, as amended).

In its Reference Manual for South Carolina Public Library Trustees, the South Carolina State Library gave the following as the “Trustee’s Job Description”:

1. advocate for the Library in the community and advocate for the community as a member of the Library Board;⁴
2. plan for the future of the Library;
3. monitor and evaluate the overall effectiveness of the Library (including the Library’s finances);
4. set library policies; and
5. hire and evaluate the Library Director.

A Reference Manual for South Carolina Public Library Trustees, South Carolina State Library, 2010, at p. 3.1, *available at* <http://scln.statelibrary.sc.gov/images/f/f7/TrusteeManual.pdf> .

In summary, the Legislature and Beaufort County have granted many responsibilities to the members of the Beaufort County Library Board of Trustees, including the general power to “adopt regulations

³ Beaufort County Code of Ordinances §§ 2-191 – 2-198 were formerly Beaufort County Code of Ordinances § 2002/33.

⁴ The Manual explains that “advocacy for the Library will take several different forms, including establishing a relationship with the County Council; communicating to taxpayers the needs and plans of the Library; and carrying out public relations activities for the Library.” Manual, at p. 3.3. The Manual also states that “[o]ne of the main responsibilities of the Library Board is to obtain adequate financing for the Library. Reaching out into your local community to provide the financial support the Library needs has always been a hallmark of library trusteeship.” Manual, at page 3.2.

necessary to ensure effective operations, maintenance and security of the property of the library system” (provided that it does not conflict with “policy or regulations established by council”). (See Ordinance § 50-33, supra). As shown above, the Board of Trustees has the responsibility to report on any issue concerning the development of library services in the county, including but not limited to proposed contracts, acquisition or disposal of property, the annual budget, the report of operations and expenditures for the prior fiscal year, and the strategic plan.

II. To whom does the library director report? To whom does the Beaufort County Library Board of Trustees report?

We determined in a prior opinion:

Based upon our interpretation of the provisions contained in section 4-9-35 et seq. and our prior opinion⁵, we remain of the opinion that chief librarians are under the supervision and responsible to their respective library boards, rather than to their counties. Accordingly, we do not believe the Chief Librarian must report to the County, or in this case the Division Director of Administration for the County. However, in accordance with section 4-9-38⁶, the Chief Librarian continues to be subject to county personnel policies and must abide by these policies.

⁵ In Op. S.C. Atty. Gen., May 23, 1983 (1983 WL 181894), we considered an amendment to a county ordinance which gave the county’s library board only the authority to recommend employment of a chief librarian to the county council and made the chief librarian responsible to county council rather than the library board. “We considered the Legislature's intent with regard to the provisions contained in sections 4-9-35 et seq. We found the Legislature, through its enactment of these provisions, sought to create uniform county library systems. With this intent in mind, we determined this amendment ran afoul of the library board's authority to control and manage the public library system pursuant to section 4-9-35(B).” See Op. S.C. Atty. Gen., July 11, 2008 (2008 WL 3198122) (interpreting our May 23, 1983 opinion).

⁶All employees of a county public library system shall be subject to the provisions of item (7) of § 4-9-30. S.C. Code Ann. § 4-9-38 (1976 Code, as amended).

Section 4-9-30(7) states:

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

(7) to develop personnel system policies and procedures for county employees by which all county employees are regulated except those elected directly by the people, and to be responsible for the employment and discharge of county personnel in those county departments in which the employment authority is vested in the county government. . . .

Op. S.C. Atty. Gen., July 11, 2008 (2008 WL 3198122). Therefore, the library director reports to the Beaufort County Library Board of Trustees (“Board”).

The issue is to whom the Board reports. According to your letter, Beaufort County has a council-administrator form of government. S.C. Code Ann. §§ 4-9-610 et seq. (1976 Code, as amended) provides for the council-administrator form of government. Section 4-9-620 states:

The council shall employ an administrator who shall be the administrative head of the county government and shall be responsible for the administration of all the departments of the county government which the council has the authority to control.

S.C. Code Ann. § 4-9-620 (1976 Code, as amended) (emphasis added).

It must be determined whether the Beaufort County Council has the “authority to control” the Board. “[T]he governing body of any county may by ordinance provide for the composition, function, duties, responsibilities, and operation of the county library system. . .” See S.C. Code Ann. § 4-9-35 (1976 Code, as amended). “Each county library system shall be controlled and managed by a board of trustees. . . appointed by the county council. . . .” Id. “Board, agency or commission members shall serve at the pleasure of council. . . .” Beaufort County Code of Ordinances § 2-193. “Council shall appoint board, agency or commission members. . . .” Id. “[A] simple majority of council vote shall remove an individual from membership [from the board]. . . .” Id. “[A]ny such conveyance, lease or purchase of real property [for the exclusive use of the county public library system] shall be by the governing body. . . .” S.C. Code Ann. § 4-9-36 (1976 Code, as amended). “Contracts and agreements [carrying out the functions of the library system] shall be subject to approval by the governing body of the county.” Id. “All funds appropriated, earned, granted or donated to the library system, including funds appropriated by the county council, shall be deposited and expended as provided for by the ordinance in each county establishing the library system. . . .” S.C. Code Ann. § 4-9-37(c) (1976 Code, as amended).

Since the Beaufort County Council has the right to appoint members to the Board, to remove them 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 the County Council can control the Board and the county administrator has the authority to manage the Board. Therefore, the Board is accountable to and must report to the administrator.

This conclusion is further supported by the administrator being granted the following powers:

- (1) to serve as the chief administrative officer of the county government.
..
- (3) to direct and coordinate operational agencies and administrative activities of the county government;
- (4) to prepare annual operating and capital improvement budgets for submission to the council and in the exercise of these responsibilities he

shall be empowered to require such reports, estimates and statistics on an annual or periodic basis as he deems necessary from all county departments and agencies;

(5) to supervise the expenditure of appropriated funds;

(6) to prepare annual, monthly and other reports for council on finances and administrative activities of the county. . .

(9) to perform such other duties as may be required by the council.

S.C. Code Ann. § 4-9-630 (1976 Code, as amended).

CONCLUSION

This Office concludes:

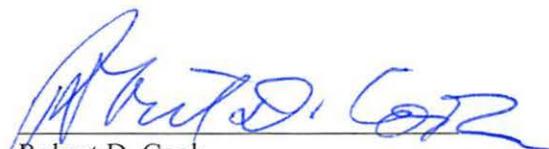
1. The Legislature and Beaufort County have granted many responsibilities to the members of the Beaufort County Library Board of Trustees which have been enumerated above, including the general power to “adopt regulations necessary to ensure effective operations, maintenance and security of the property of the library system” (provided that it does not conflict with “policy or regulations established by council”). As shown above, the Board of Trustees has the responsibility to report on any issue concerning the development of library services in the county, including but not limited to proposed contracts, acquisition or disposal of property, the annual budget, the report of operations and expenditures for the prior fiscal year, and the strategic plan.
2. A court would probably find that the library director reports to the Beaufort County Library Board of Trustees (“Board”) and the Board reports to and is accountable to the county administrator.

Sincerely,



Elinor V. Lister
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General