



ALAN WILSON  
ATTORNEY GENERAL

June 30, 2014

The Honorable Larry A. Martin  
Senator, Pickens County  
P.O. Box 142  
Gressette Senate Office Building  
Columbia, SC 29202

Dear Senator Martin:

You seek an opinion “concerning a memorandum of understanding (hereinafter “MOU”) that was presented to the Pickens County Board of Voter Registration and Elections (hereinafter “The Board”) by the Pickens County Council. . . .” The purpose of the MOU, as you understand it, is to set forth “terms and conditions for any appropriation to meet the expenses of the Board.”

You further note that the preamble to the MOU provides that the Pickens County Council (hereinafter “Council”) believes the terms and conditions sought to be imposed on the Board “are in the best interest of the County and its citizens” and that such terms and conditions will provide “adequate oversight and safeguards on the appropriation of tax dollars.” You further state that the “oversight and safeguards referenced by Council are to be accomplished according to the MOU by the Board by delegating its authority to the Council in exchange for funding.” In addition, you reference the fact that “the Board must agree to consult with the County Administrator throughout the hiring process of the Board’s director and staff.” Further, you note that “the Board, must agree to a compensation schedule by its director and staff as established by the County for all other county employees.” Finally, you state, that “in order to receive funding, the Board must agree that it will incur expenses and/or pay funds as appropriated by the County.”

You raise two specific questions. As you state, the “first issue is whether the conditions sought to be imposed on the Board in exchange for funding, are constitutionally or statutorily permissible.” In your view, the “MOU would place the Council in *de facto* control of the operations of the Board by (a) controlling the hiring and paying of staff, as well as (b) failing to appropriate funding for Board operations that are required by state law, but that Council may not want.” Specifically, your question is whether “such a transfer of operational control under these forced circumstances [would] be an unlawful delegation to the Council?”

The second issue you raise is “whether the Council, under the provisions of 7-5-10 *et seq.* has any legal authority to withhold payment of funds for the operation of the Board should the Board refuse to execute the proposed MOU?”

It is our opinion that Council may not delegate to itself operational control of the Board in the form of the MOU. Such delegation would, in our opinion, constitute an unlawful delegation to Council, inconsistent with state law. Likewise, while Council possesses broad appropriation power, it is our

opinion that Council possesses no legal authority to withhold funding from the Board in order to fulfill the terms and conditions of the MOU. Such withholding of funding could serve to alter or change state law, which Council is not authorized to do.

### Law/Analysis

The General Assembly recently enacted Act No. 196 in 2014. Section 1 of the Act (§ 7-3-20(c)) requires the executive director of the State Election Commission to “supervise the conduct of county boards of election and voter registration, as established pursuant to Article 1, Chapter 5, which administer elections and voter registration in the State and ensure those Boards’ compliance with the requirements with applicable state or federal law. . . .”

Section 3 of the Act (§ 7-5-10 *et seq.*) provides for the method of appointment of members of the Board of Voter Registration and Elections of each County. Members are appointed by the Governor upon the recommendation of the legislative delegation. The Act sets the maximum and minimum membership of the Board (no less than five, not more than nine).

Section 3 specifies other details of Board operation, such as voting, training of members, filling of vacancies, selection of a chairman and other officers, etc. Subsection (7) further provides that “members on the board and its staff shall receive compensation as may be appropriate by the governing body of the county.” Subsection (6) also mandates that:

*(c) The board must hire a director. The director is responsible for hiring and managing the staff.* Staff positions are subject to the personnel system policies and procedures by which all county employees are regulated, except that the director serves at the pleasure of the board. A member of the board must not be hired or serve or serve as a member of the staff while serving as a board member.

(emphasis added).

It is clear from the foregoing, particularly Subsection 6, that it is the Board which oversees agency operations through its executive director. The Board hires the executive director, who “serves at the pleasure of the Board,” and the executive director is responsible for “hiring and managing the staff” of the Board. The law could not be clearer. While it is true that the Act deems staff members to be “subject to other personnel system policies and procedures, by which all county employees are regulated,” such does not alter or modify the clear delegation by the General Assembly to the Board and the executive director to manage the affairs and operations of the Board.

We have issued a number of opinions over the years which have addressed similar situations. Most recently, in *Op. S.C. Att’y Gen.*, June 28, 2013 (2013 WL 3479875), we concluded that, even though staff and employees of the Allendale Board of Voter Registration and Election Commission are “county employees” and such positions are funded by the County, the County Administrator possessed no authority to hire and fire such employees. We referenced Section 4-9-30(7), which authorized counties, in pertinent part, as follows:

To develop personnel system policies and procedures for county employees by which all county employees are regulated except those directly elected by the people, and to be

responsible for the employment and discharge of county personnel in those county departments in, which employment authority is vested in the county government. This employment and discharge authority does not extend to any personnel employed in departments or agencies under the direction of an elected official or an official appointed by an authority outside county government.

In our view, since the Governor appointed Board members upon the recommendation of the legislative delegation, such was an appointment “by an authority outside of county government.” Thus, we concluded, citing previous opinions, as follows:

Even though the supervisory authority to hire and fire employees of the county election commission comes from the commissioners, this Office previously opined the County Administrator had no authority over the employees of the County Board of Elections and Registration even though allocation and compensation of those employees came from the county. See *Op. S.C. Att’y Gen.*, 2005 WL 265237 (October 11, 2005) (citing 1989 WL 406131 (April 6, 1989)).

See also: 2007 WL 3317619 (October 22, 2007) (citing *Op. S.C. Att’y Gen.*, 1989 WL 406131 (April 6, 1989)).

The April 6, 1989 Opinion, which has been confirmed time and again by subsequent opinions of this Office, is particularly instructive. There, we rejected any authority of County Council over employment of personnel or operations of a county election commission, citing § 4-9-30(7), and stating as follows:

[state law] expressly provides that commissioners of election are appointed by the Governor upon the recommendation of the [legislative delegation]. . . . Since the appointing authority for county election commissioners is by authority “outside county government” by Section 4-9-30(7) the General Assembly has mandated that county council possesses no authority in this area, although county election commissioners have been determined in prior opinions of this Office to be county officers. This conclusion is consistent with 1975 Op. Atty. Gen., No. 4196, p. 246 (November 21, 1975) which concluded that the Home Rule Act effects “no change in the functioning or structure” of county election commissioners.

As we have previously stated, “a county council is obligated to follow general laws and lacks authority to amend the general laws of this State.” *Op. S.C. Att’y Gen.*, December 1, 1986 (1986 WL 289894). Accordingly,

. . . an ordinance adopted by a county council which is repugnant to or inconsistent with the Constitution or general laws of this State would be considered void.

(citations omitted).

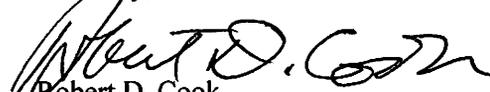
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*Id.* See also, *Roton v. Sparks*, 270 S.C. 637, 639, 244 S.C. 2d 214, 216 (1978) (Gregory, J., concurring) [Home Rule “did not transfer absolute authority over all matters of local concern to counties.”]; *Eargle v. Horry County*, 335 S.C. 425, 517 S.E. 2d 3 ((Ct. App. 1999), *aff’d.*, 344 S.C. 449, 545 S.E. 2d 276 (2001); *Op. S.C. Att’y Gen.*, October 21, 2011; *Op. S.C. Att’y Gen.*, October 21, 2011 (2011 WL 5304074) [while “employees of a county veterans affairs officer are considered county employees and are paid by the county, any decision regarding the actual hiring and discharge of these employees is a decision of the county veterans affairs officer” and not county council or the county administrator. Thus, county government may not interfere with the duties of the county veterans affairs officer]. All of these authorities point to the clear conclusion that county council possesses no authority with respect to agencies appointed outside of county government, such as in this instance.

#### Conclusion

1. It is our opinion that Pickens County Council may not delegate to itself operational control of the Board in the form of the MOU. Such purported delegation would, in our opinion, constitute an unlawful delegation to Council, inconsistent with state law.
2. Likewise, while County Council possesses broad appropriation authority to fund county agencies, it is our opinion that Pickens County Council possesses no authority to withhold legal funding from the Board in order to fulfill the terms and conditions of the MOU. Such withholding of funding would be likely be deemed by a court as an effort to amend or modify state law, a power which is beyond the Council. Our previous opinions, discussed in detail herein, clearly indicate that the appointment authority of the Board is “outside the authority of county government” and is thus beyond the power of Council or county government to regulate.

Sincerely,

  
Robert D. Cook  
Solicitor General