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ALAN WILSON  
ATTORNEY GENERAL

August 22, 2014

Joshua A. Gruber, Esq.  
Beaufort County Attorney  
PO Drawer 1228  
Beaufort, SC 29901-1228

Dear Mr. Gruber:

In response to our reconsidered and amended opinion of July 28, 2014 (Op. S.C. Atty. Gen., July 28, 2014 (2014 WL 3886690)) regarding the Beaufort County Library Board of Trustees, you ask for clarification. Each of your questions and its analysis follows.

**LAW/ANALYSIS:**

I. S.C. Code Ann. § 4-9-35 states, “. . .the governing body of any county may by ordinance provide for the composition, functions, duties, responsibilities, and operation of the county library system.” In furtherance of this statutory requirement Beaufort County Council adopted such an ordinance codified in Beaufort County Code of Ordinances § 50-33 that provides the Beaufort County Library Board of Trustees with the authority to hire a chief librarian, upon the advice and consent of the county administrator. Given your opinion of July 28, 2014 and the statutory authority found in S.C. Code Ann. § 4-9-35, is this requirement for cooperation between the Beaufort County Library Board of Trustees and the county administrator still valid?

You refer to section 4-9-35(A) of the South Carolina Code, which provides:

(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. . . .

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

Another pertinent code section to consider when responding to your question is section 4-9-36, which grants county library boards certain powers. One of the powers granted to the library boards of trustees is to:

[e]mploy 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.

S.C. Code Ann. § 4-9-36(1) (1976 Code, as amended).

We quoted a prior May 23, 1983 opinion in both our July 28, 2014 and March 27, 2014 opinions regarding the Beaufort County Library Board. In our May 23, 1983 opinion, we reviewed a proposed amendment to an ordinance in Pickens County in which the library board would make a recommendation to the county council for the employment of a chief librarian and the chief librarian would be responsible to the county council, and not to the library board. We determined that the proposed amendment to the ordinance did not comply with section 4-9-36, which gave library boards the power to hire a chief librarian who was responsible to the library board. The proposed amendment to the ordinance also did not allow for the uniformity of county library systems, which was required by Act Number 564 of 1978, as shown by its title, “[a]n Act To Amend The Code of Laws of South Carolina, 1976, By Adding Section 4-9-35, 4-9-36, 4-9-37, 4-9-38 And 4-9-39, So As To Provide For The Establishment By County Council Of County Library Systems On A Uniform Basis, Provide For the Powers and Responsibilities of County Libraries and The Governing Bodies Thereof” (emphasis added). Additionally, we stated the following regarding the proviso of section 4-9-35(A):

[i]t is the opinion of this office that the proviso in Section 4-9-35(A) merely permits the County Council to further delineate the duties and responsibilities of the [Library] Boards of Trustees consistent with the state statute and does not permit County Council to remove duties conferred on the [Library] Boards by state law.

Op. S.C. Atty. Gen., May 23, 1983 (1983 WL 181894).

Based upon our prior opinions and code sections 4-9-35(A) and 4-9-36(1), the Beaufort County Library Board of Trustees can hire and supervise the chief librarian without the advice and consent of the county administrator.

- II. **An Attorney General’s opinion issued February 3, 1995 found that service on the Beaufort County Library Board of Trustees was not an office for dual office holding considerations because the Board’s charter provided for advisory responsibilities rather than autonomous decision making authority as was found in most other library board charters. See, Op. Atty. Gen., November 1, 1995 (Charleston County Library Board); Op. Atty. Gen., October 23, 1995 (Charleston County Library Board); Op. Atty. Gen., September 25, 1989 (Barnwell County Library Board); Op. Atty. Gen., February 11, 1981 (Allendale County Library Board); Op. Atty. Gen., July 24, 1980 (Greenville County Library Board); Op. Atty. Gen., March 11, 1976 (Florence County Library Board).**

**Given this information, does your opinion of July 28, 2014 have any effect on whether or not service on the Beaufort County Library Board of Trustees is considered an office for dual office holding consideration?**

The South Carolina Constitution provides that “no person may hold two offices of honor or profit at the same time. This limitation does not apply to officers in the militia, notaries public, members of lawfully and regularly organized fire departments, constables, or delegates to a constitutional convention.” S.C. Const. art. XVII § 1A.

The South Carolina Supreme Court explains that an “office” for dual office holding purposes is:

“One who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing, and not occasional or intermittent, is a public officer.” Sanders v. Belue, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907). “In considering whether a particular position is an office in the constitutional sense, it must be demonstrated that “[t]he power of appointment comes from the state, the authority is derived from the law, and the duties are exercised for the benefit of the public.” Willis v. Aiken County, 203 S.C. 96, 103 26 S.E.2d 313, 316 (1943). “The powers conferred and the duties to be discharged with regard to a public office must be defined, directly or impliedly, by the legislature or through legislative authority...” 63C Am Jur.2d Public Officers and Employees § 5 (2009).

Segars-Andrews v. Judicial Merit Selection Commission, 387 S.C. 109, 691 S.E.2d 453 (2010). “Other relevant considerations [as to whether a position is a public office] include: ‘whether the position was created by the legislature; whether the qualifications for appointment are established; whether the duties, tenure, salary, bond, and oath are prescribed or required; whether the one occupying the position is a representative of the sovereign; among others.’” See Op. S.C. Atty. Gen., June 17, 2013 (2013 WL 3243063) (quoting State v. Crenshaw, 274 S.C. 475, 478, 266 S.E.2d 61,62 (1980)).

In our February 3, 1995 opinion (Op. S.C. Atty. Gen., February 3, 1995 (1995 WL 803317)), we opined that members of the Beaufort County Library Board of Trustees were not officers for dual office holding purposes because they were serving as an advisory body to county council under the Beaufort County ordinances and charter and thus were not exercising a portion of the sovereign power. However, we did not consider in that opinion that the Legislature had assigned powers to all county library boards of trustees pursuant to sections 4-9-36 and 4-9-37 of the Code. These powers include: employing a chief librarian who reports to the library board; acquiring books and other materials; accepting donations; receiving and expending money from private or public sources for the operation, expansion, or improvement of the library system; establishing a headquarters library and branches within the limits of available funds; taking “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;” and adopting “regulations necessary to insure effective operation, maintenance and security of the property of the library system” as long as they are not “in conflict with policy or regulations established by” the county council. S.C. Code Ann. §§ 4-9-36, 4-9-37 (1976 Code, as amended).

In the February 3, 1995 opinion, we also did not consider our prior May 23, 1983 opinion (which was discussed above) which provides that county councils cannot curtail the powers granted to the library boards of trustees by the General Assembly pursuant to sections 4-9-36 and 4-9-37. Upon

reconsideration, the Beaufort County Library Board of Trustees is exercising a portion of the sovereign power of the State because of the duties it has been given by the Legislature. Therefore, its members are officers for dual office holding purposes and we amend our February 3, 1995 opinion to that effect.

Pursuant to State law, the Attorney General is only required to answer legal questions for the State of South Carolina and the State's elected officials. See S.C. Code Ann. §§ 1-7-90, 1-7-100, 1-7-110 (1976 Code, as amended). Therefore, we strongly encourage any future disputes regarding the library system or its board of trustees in Beaufort County to be resolved by a court, especially since a court can issue a binding opinion.

**CONCLUSION**

In conclusion, this Office believes that the law is as follows:

1. The Beaufort County Library Board of Trustees can hire and supervise the chief librarian without the advice and consent of the county administrator.
2. Members of the Beaufort County Library Board of Trustees are officers for dual office holding purposes and we amend our February 3, 1995 opinion which states otherwise.

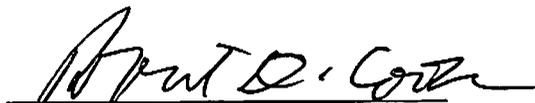
Please be aware that this is only an opinion as to how this Office believes a court would interpret the law in this matter.

Sincerely,



Elinor V. Lister  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General