



ALAN WILSON  
ATTORNEY GENERAL

April 27, 2015

The Honorable John Richard C. King  
House of Representatives, District No. 49  
309-A Blatt Building  
Columbia, SC 29211

Dear Representative King:

Attorney General Alan Wilson has referred your letter dated March 17, 2015 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

**Issue** (as quoted from your letter):

*It is apparent, in reading former opinions, that a county council is required to provide office space to the county legislative delegation pursuant to Section 3 of the Home Rule Act of 1975, but it is not clear whether this obligation must be satisfied upon the request of an individual member of the delegation, or if the delegation, as a whole, has to make this request. ... In addition, what specifically are they required to provide to the delegation by way of office space and/or compensation for an office?*

**Law/Analysis:**

As you mention in your letter, this Office has previously opined on similar questions regarding the provision of office space for a county's legislative delegation. We have previously stated that a county council could not make cash payments to members of the delegation in lieu of actual office space. *See, e.g., Ops. S.C. Att'y Gen., 2013 WL 3762704 (July 8, 2013); 1979 WL 43593 (September 18, 1979).* This Office also previously opined that a county must provide not only office space for the county's legislative delegation but also appropriations to run the office. *Op. S.C. Att'y Gen., 1996 WL 265502 (April 18, 1996).* This Office explained:

*The provision of the Home Rule Act to which you are referring is found in section 3 of Act No. 283 of 1975, which section provides in relevant part:*

*Under all forms of county government except the board of commissioners form, county councils shall provide office space and appropriations for the operation of the county legislative delegation office including compensation for staff personnel and necessary office supplies and equipment. The amount of such appropriations shall be determined by the legislative delegation and included in the annual county budget by the council. The delegation shall be responsible for the*

*employment, supervision and discharge of all personnel employed in the delegation office. [Emphasis added.]*

*This provision of the Home Rule Act has been the subject of numerous opinions of the Office of the Attorney General, among them opinions dated December 29, 1976; September 9, 1977; May 18, 1978; September 18, 1979; July 16, 1980; July 7, 1981; August 17, 1981; April 15, 1983; October 18, 1983; and December 22, 1988. [...] These opinions have consistently interpreted section 3 of the Home Rule Act to mean that a county council would be required to furnish office space and appropriations for the operation of an office for the county legislative delegation. The delegation itself would be responsible for determining the amount of appropriated funds which would be necessary to fund the office, and county council would then be required to provide that amount.*

*That the above-quoted portion of the Home Rule Act was not codified in the 1976 Code of Laws [FN1] was discussed in the opinion of December 22, 1988. Therein, it was stated:*

*In spite of the fact that the relevant portion of section 3 of Act No. 283 of 1975 was omitted from the 1976 Code of Laws, this Office has continued to suggest that the enactment be followed, as indicated by the five referenced opinions, the oldest of which was issued several years after the adoption of the Home Rule Act. It is also worthy of mention that another uncodified portion of section 3 of Act No. 283 has been discussed and applied as late as 1986 in Graham v. Creel, 289 S.C. 165, 345 S.E.2d 717 (1986), ... .*

*Thus, it appears appropriate that section 3 of Act No. 283 of 1975 continue to be followed, in spite of its failure to be codified in the 1976 Code of Laws.*

*It is observed that since the 1988 opinion was rendered by the Office of the Attorney General, no legislative changes have been forthcoming. It is well recognized that the absence of any legislative amendment following the issuance of an opinion of the Attorney General strongly suggests that the views expressed therein were consistent with legislative intent. Scheff v. Township of Maple Shade, 149 N.J.Super. 448, 374 A.2d 43 (1977); Op. Att'y Gen. No. 84-69. Indeed, the General Assembly has on occasion acted swiftly in amending statutes following the issuance of an opinion by this Office; but such amendment has not been forthcoming in this instance.*

*It is further observed that in the volume of the Code of Laws titled "Statutory Tables," no reference is made to the repeal, by implication or otherwise, of section 3 of Act No. 283 which, as noted earlier, was once codified as § 14-3717 of the 1962 Code of Laws. Arguably, the Code Commissioner has therefore not considered this section to have been repealed. [FN2] I have been unable to locate a legislative act expressly repealing the section. Furthermore, repeal by implication is not favored. State v. Thrift, 312 S.C. 282, 440 S.E.2d 341 (1994). It*

*is my understanding that county councils have continued to follow this uncodified provision, in various ways, since the inception of the Home Rule Act. Thus, the provision has not been treated as repealed, due to its lack of codification, by the State or its political subdivisions.*

### **CONCLUSION**

*Based on the foregoing, it is too late in the day to argue that the county does not have an obligation to provide office space and appropriations for the operation of the county legislative delegation office. With Home Rule came that obligation. Absent an express repeal of Section 3 of the Home Rule Act, and I find none, it cannot be said that a repeal may be implied through a failure to insert this provision in the Code. Accordingly, this Home Rule requirement remains on the books.*

*Moreover, earlier opinions of this Office conclude that the Home Rule Act “contemplates the establishment and maintenance by each county of one legislative delegation office and does not ... authorize the payment of expenses for conducting delegation business to individual delegation members who maintain private business offices of whatever nature.” Op. Att’y Gen. September 18, 1979 (Karen LeCraft Henderson). Those earlier opinions are hereby reaffirmed today. It is, therefore, my opinion that the county is obligated to provide the delegation with an office and with the appropriation deemed necessary by the delegation to operate the office, and not its members with a personal subsidy.*

Op. S.C. Att’y Gen., 1996 WL 265502 (April 18, 1996). As referenced in the 1996 opinion, this Office stated in a 1976 opinion:

*In response to your request for an opinion from this Office as to the present duties of the legislative delegation now that the provisions of Act No. 283 of 1975, the ‘home rule’ legislation, are operative, the following areas of concern remain within the province of the legislative delegation:*

...

*2. The legislative delegation is to be provided with office space, personnel, supplies and equipment by each county council pursuant to the provisions of Section 14-3717, CODE OF LAWS OF SOUTH CAROLINA, 1962, (Cum. Supp.). The delegation is to determine the amount of appropriations necessary for the operation of its office and the county council is to include that amount in its annual budget. The delegation is also responsible for the employment, supervision and discharge of the personnel in the delegation office.*

Op. S.C. Att’y Gen., 1976 WL 30913 (December 29, 1976). This Office recognizes a long-standing rule that it will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law. Ops. S.C. Att’y Gen., 2009 WL 959641 (March 4, 2009); 2006 WL 2849807 (September 29, 2006); 2005 WL 2250210 (September 8, 2005); 1986 WL 289899 (October 3, 1986); 1984 WL 249796 (April 9, 1984); et al. Therefore, we will not overrule previous opinions opining a county is obligated to pay for office space and staff for the county’s legislative delegation without sufficient cause.

We think it may be helpful to review a question this Office addressed in a 1995 opinion concerning funding by a county for a Veteran's Affairs office, as it was a question similar to yours. See Op. S.C. Att'y Gen., 1995 WL 8035551 (May 8, 1995). In that opinion, we stated:

*Without question, the appropriation of money is a legislative function. At the county level, that function rests with county council, as to county agencies. §4-9-140, S.C. Code Ann. (1976, revised 1986). I am of the opinion that county council has discretion to determine the extent to which a county office will be funded, in the absence of a statute reposing that responsibility in some other entity. Since the Veterans' Affairs Officer is one whose appointment is made by an authority outside county government, perhaps consideration could be given by the General Assembly to adoption of a general law specifying how appropriations for the office of the Veterans' Affairs Officer is to be accomplished. (By way of contrast, I would refer you to S.C. Code Ann. §22-8-30, requiring each county to "provide sufficient facilities and personnel for the necessary and proper operation of the magistrates' courts in that county" and §14-23-1130, requiring the governing body of each county to provide, *inter alia*, office space, additional support personnel, books, and the seal of the court for the probate court of that county.) Unless and until such a statute is adopted for the benefit of the counties' Veterans' Affairs Officers, appropriations will, in my opinion, remain within the discretion of each county council to handle as that body determines to be appropriate.*

Op. S.C. Att'y Gen., 1995 WL 8035551 (May 8, 1995). As we concluded in the 1995 opinion, unless and until the General Assembly passes specific legislation, county appropriations remain within the discretion of the county council. Id. We would affirm that each county council would have discretion to determine to the extent and availability of office space and would include in that office space for a legislative delegation. Certainly where there is no codified law concerning office space and funding for a legislative delegation- only practice and lack of repeal- there cannot be a finding for a requisite amount of space. As far as the monetary amount, we will have to revert to the original language of the Act, which states (as quoted above):

... county councils shall provide office space and appropriations for the operation of the county legislative delegation office including compensation for staff personnel and necessary office supplies and equipment. The amount of such appropriations shall be determined by the legislative delegation and included in the annual county budget by the council.

1975 S.C. Acts 283 § 3. This Office previously opined that the Act authorized the legislative delegation to determine the size and compensation of its staff without input from county council. See, e.g., Ops. S.C. Att'y Gen., 1989 WL 508510 (March 13, 1989); 1983 WL 181847 (April 15, 1983). This Office is aware that the 1975 Act, while not officially repealed, has not been codified either. However, relying on appropriations from county council has consistently been practiced. Therefore, while the Act assumes full appropriation to the legislative delegation based on legislative request, this Office would further opine that a court would likely find that appropriations, if at all required, must, at minimum, be reasonable, which we interpret to mean consistent with the size and ability of the county to pay. Thus, we can offer no specified amount of space, nor minimum budget, as we would leave such determinations within the discretion of the county and to the needs of the delegation.

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**Conclusion:**

In conclusion, unless and until a court or the Legislature says otherwise, we believe a court would find that a majority of the legislative delegation<sup>1</sup> may submit a reasonably-proposed budget to its county council. We think a court would then find county council should then appropriate the necessary funds, resources and space, as reasonably available. Nevertheless, there are many other sources and authorities you may want to refer to for a further analysis. For a binding determination, this Office would recommend seeking a declaratory judgment from a court on these matters, as the court is charged with the interpretation of statutes. S.C. Code § 15-53-20. Until a court or the Legislature specifically addresses the issues presented in your letter, this is only a legal opinion on how this Office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,



Anita S. Fair  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General

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<sup>1</sup> Please note this Office has previously opined the Act would only require one office for the entire delegation. See Op. S.C. Att'y Gen., 1983 WL 182030 (October 18, 1983). As to your question to whether one member may make such a request, this Office will presume the proposed budget would reflect the needs and personnel accordingly. However, this Office has previously opined that it is likely a court will determine a majority of the county's legislative delegation should determine the number and staff of its office, since the Act states "[t]he amount of such appropriations shall be determined by the legislative delegation." Op. S.C. Att'y Gen., 1980 WL 120772 (July 16, 1980). Thus, since we believe a majority of the delegation must approve the proposed budget to be submitted to county council, we believe a court will determine a majority of the delegation may vote to eliminate the office by not submitting a proposed budget.