

1977 WL 37367 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 17, 1977

*1 James A. Bell, Esquire
County Attorney
P. O. Box 905
St. George, South Carolina 29477

Dear Mr. Bell:

You have requested an opinion from this Office as to whether or not the Dorchester County Council (Council) is authorized to move the office of the Dorchester County Deputy Treasurer into the office of the Dorchester County Treasurer and to delete one clerk in the Deputy Treasurer's office from the county budget for 1977-78. In my opinion, the Council is so authorized as hereinafter discussed.

Pursuant to the provisions of Act No. 283 of 1975, the 'home rule' legislation, a county governing body cannot enact an ordinance in conflict with existing law relating to offices, agencies and operations of the county until January 1, 1980. § 14-3717, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended (Cum. Supp.). Accordingly, the Council cannot abolish the office of Deputy Treasurer or alter its functions in such a manner as to conflict with legislation related thereto until January 1, 1980. Nonetheless, there is no legislation of which I am aware which specifies that the Deputy Treasurer is to have his own separate office or that he is to have two clerks. Cf., 57 STAT. 2256 (1972). Consequently, I believe that while the Council is not expressly authorized by the provisions of the 'home rule' legislation to alter office space and locations, neither is it proscribed from doing so.

Furthermore, the Council exercises totally the budgetary authority of the county and, consequently, can decrease, increase or otherwise alter appropriations for specific county offices and functions. § 14-3711, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended (Cum. Supp.).

Nevertheless, it cannot so decrease the appropriations of an elected official's office as to prevent the proper functioning thereof and, thus, indirectly, to abolish that official's office. Whether or not the Deputy Treasurer can properly carry out the duties of his office with only one clerk is a factual matter which cannot be determined by this Office. If the Deputy Treasurer can fulfill his statutory duties and functions with the assistance of only one clerk, however, then the Council, in my opinion, would be free to delete the position of the second clerk from the County budget. This is so, notwithstanding the following language of Section 14-3703(7) of the Code:

. . . this authority [of a county council to be responsible for the employment and discharge of county personnel] shall not extend to any personnel employed in departments or agencies under the direction of . . . an official appointed by an authority outside county government. . . .

To me, this language, when read in conjunction with the budgetary power of the Council, means that the Council cannot hire and fire the employees of the Deputy Treasurer but that it can determine how many employees the Deputy Treasurer is to hire and fire. Cf., 20 C.J.S. Counties § 235 at 1119-20.

*2 You have also inquired as to whether or not the Council followed the proper parliamentary procedure as outlined in Robert's Rules of Order in connection with amendments to the County budget whereby the Deputy Treasurer's office was moved to the Treasurer's office and the position of one of the Deputy Treasurer's clerks was deleted therefrom. As I understand it the first

amendment to achieve this result was defeated; then, the same council member who had introduced the defeated amendment introduced a second amendment identical in effect with the first amendment and it carried. In my opinion, such action cannot validly be taken pursuant to Robert's Rules of Order. In determining the germaneness of an amendment and, thus, whether or not an amendment is in order, Robert's Rules of Order specifies the following general rule of parliamentary law: During the session in which the assembly has decided a question, another main motion raising the same or substantially the same question cannot be introduced. Robert's Rules of Order § 12 at 113.

Robert's Rules of Order further includes as an improper amendment:

One that would make the question as amended identical with, or contrary to, one previously decided by the assembly during the same session, . . . Ibid., at 115.

Inasmuch as the original amendment to relocate the Deputy Treasurer's office and to decrease his staff by one clerk was defeated, a second amendment made at the same meeting which, if successful, would achieve the same result would be out of order.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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