



ALAN WILSON  
ATTORNEY GENERAL

December 18, 2017

Rokey W. Suleman, II  
Director  
Richland County Board of Voter Registration and Elections  
P.O. Box 192  
Columbia, SC 29202

Dear Mr. Suleman:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter asks the following questions:

Under South Carolina law, is a county board of voter registration and elections a board or agency of the respective county or a board or agency of the State?

Is a county responsible for providing legal services for its respective county board of voter registration and elections, or for otherwise appropriating sufficient funds to allow a county board of voter registration and elections to obtain legal services? If not, what entity is responsible for providing such services?

Is a county responsible for paying settlement and judgment amounts that are the result of litigation brought against the board? If not, what entity is responsible for paying such settlement and/or judgment amounts?

Does a county have the authority to prevent a county board of voter registration and elections from paying legal fees and settlements out of the board's own budget by passing an ordinance or resolution which prohibits funds already appropriated by the county from being used for such purposes?

### Law/Analysis

- I. **Under South Carolina law, is a county board of voter registration and elections a board or agency of the respective county or a board or agency of the State?**

This Office has consistently held that county board of voter registration and elections as well as their predecessor bodies are county agencies. This Office's November 21, 1975 opinion

addressed to the Secretary for the Commissioners of Election for Charleston County, Joseph S. Mendelsohn, examined how the Home Rule Act impacted the commission's appointments and functions as follows:

It is my opinion that the Act will effect no change in the functioning or structure of that body. Section 14-3714 provides, in part, that the county council will not have any new appointive powers with regard to existing commissions and boards whose members are appointed pursuant to general law, as is the case with county election commissions throughout the State. See, 54 STAT. Act No. 971, Part I, Art. 1, subdivision 10 at 2343 (1966); 55 STAT. Act No. 336 at 3120 (1968). Moreover, Section 3 of the Act provides, in part, that all agencies and offices of county government and laws related thereto are to remain in full force and effect until at least January 1, 1980, unless theretofore repealed by the General Assembly. After that date, the county council is empowered to enact ordinances which may supersede special laws relating to that county.

1975 S.C. Op. Att'y Gen. 246 (1975); see also Ops. S.C. Atty. Gen., 1989 WL 406131 (April 6, 1989) (county election commissions have authority to hire and fire clerks and other employees of the commission as "county employees" and the commissions are appointed by an authority "outside county government" under S.C. Code Ann. § 4-9-30(7)); 1998 WL 196482 (March 16, 1998) ("It follows that county boards of registration and election, as the units responsible for the conduct of the election process in the county, are county offices.")<sup>1</sup>; 2010 WL 3048334 (July 1, 2010) (Richland County Board of Voter Registration employees are "county employees"); 2011 WL 5304074 (October 21, 2011) ("[A] county veteran's affairs officer is [a] county officer serving at the pleasure of the county delegations."). This Office recognizes a long-standing rule that it will not overrule a prior opinion unless it is clearly erroneous or there has been a change in applicable law. Ops. S.C. Atty. Gen., 2017 WL 5203263 (October 31, 2017); 2017 WL 3438532 (July 27, 2017); 2013 WL 6516330 (November 25, 2013); 2013 WL 3762706 (July 1, 2013); 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). Some statutes which these opinions relied upon have since been amended or repealed. Therefore, we will provide a summary of relevant legislative actions and court decisions to determine whether to reaffirm or modify these prior opinions.

Based on our review of the following legislation and court decisions, this Office reaffirms our prior opinions and finds that county boards of voter registration and elections are county agencies. In 2008, the General Assembly ratified Act No. 312 which added Chapter 27 to Title 7 of the South Carolina Code of Laws with the following stated purpose in its title:

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<sup>1</sup> This Office's March 18, 1998 opinion regarding the McCormick County Board of Election and Registration ends with the following disclaimer, "This letter is an informal opinion only.... It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion." Following his election as Attorney General, Henry McMaster deemed this opinion and all prior opinions which had been published but designated as "informal" to be formal opinions of this Office.

TO CODIFY THE PROVISIONS OF LAW THAT CREATED AND COMBINED VARIOUS COUNTY BOARDS OF REGISTRATION AND ELECTION COMMISSIONS INTO A SINGLE ENTITY, TO PROVIDE THAT THOSE COUNTIES THAT DO NOT HAVE COMBINED BOARDS OF REGISTRATION AND ELECTION COMMISSIONS MUST HAVE THEIR SEPARATE BOARDS AND COMMISSIONS APPOINTED PURSUANT TO THE PROVISIONS OF SECTIONS 7-5-10 AND 7-13-70.

2008 Act No. 312. In Section 7-27-130, the Act clarified that Chapter 27 was not intended to alter prior statutory authority for the county boards.

The codification of the county boards of registration and election commissions as provided in Article 2 of this chapter does not create new statutory authority, but is a continuation of acts passed by the General Assembly to combine the election and registration functions in order to provide a unified commission for the traditional state functions of conducting elections and registering electors by county.

S.C. Code Ann. § 7-27-130 (Supp. 2009) (emphasis added). Section 2 of the Act provided that Richland County continued to have separate boards and commissioners as follows, “the Richland County Election Commission and the Richland County Board of Registration must have their members appointed and powers of their board and commission as provided by Sections 7-5-10 and 7-13-70.” 2008 Act No. 312, § 2.

Subsequently, in 2011, the General Assembly passed Act No. 17 which combined the Richland County Election Commission and the Richland County Board of Registration. The combined boards were reformed as the Board of Elections and Voter Registration of Richland County. 2011 Act No. 17, § 1. However, in S.C. Pub. Interest Found. v. Courson, 2012-CP-40-7790 (S.C. Com. Pl. Aug. 26, 2013), the Act’s constitutionality was challenged as a violation of both the prohibition on special legislation, S.C. Const. art. III, § 34, and the prohibition on single county acts, S.C. Const. art. VIII, § 7. The Court found that “Act 17 of 2011 violates Article VII[I], § 7 of the Constitution: ‘No laws for a specific county shall be enacted.’” Further, the Court found that the General Assembly had offered no “logical or sound reason” for the Act’s creation of “local or special legislation.” Therefore, the Court held that “Act 17 constitutes an unconstitutional local or special law, where a general law was already applicable. It creates special exception for Richland County, and it thereby violates S.C. Constitution Article III, § 34.”

Following the ruling in Courson, the General Assembly passed 2014 Act No. 196 to cure the issues identified by the Court. In relevant part, the Act is titled:

AN ACT TO AMEND SECTION 7-3-20, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE SELECTION AND DUTIES OF THE EXECUTIVE DIRECTOR OF THE STATE ELECTION COMMISSION, SO AS TO REQUIRE THE EXECUTIVE DIRECTOR OF THE STATE ELECTION COMMISSION TO SUPERVISE, REVIEW, AND AUDIT THE CONDUCT AND PERFORMANCE OF THE COUNTY BOARDS OF VOTER REGISTRATION AND ELECTIONS; BY ADDING SECTION 7-3-25 SO AS TO PROVIDE REMEDIAL PROCEDURES WHEN THE STATE ELECTION COMMISSION DETERMINES THAT A COUNTY BOARD OF VOTER REGISTRATION AND ELECTIONS HAS FAILED TO COMPLY WITH APPLICABLE STATE OR FEDERAL LAW; TO AMEND SECTION 7-5-10, AS AMENDED, RELATING TO THE APPOINTMENT AND REMOVAL OF MEMBERS OF COUNTY BOARDS OF REGISTRATION, SO AS TO ESTABLISH COUNTY BOARDS OF VOTER REGISTRATION AND ELECTIONS AND TO PROVIDE FOR THEIR COMPOSITION, TERMS, AND DUTIES; ... TO REPEAL SECTION 7-5-35 RELATING TO COMBINED COUNTY ELECTION AND REGISTRATION COMMISSIONS, SECTION 7-13-70 RELATING TO THE APPOINTMENT, REMOVAL, AND TRAINING OF COUNTY ELECTION COMMISSIONERS, AND CHAPTER 27, TITLE 7 RELATING TO COUNTY BOARDS OF REGISTRATION AND ELECTION COMMISSIONS...

2014 Act No. 196. While the Act repealed Chapter 27 of Title 7, it also created the replacement bodies for the county boards of registration, election commissions, and combined boards in the form of the county boards of voter registration and elections in Section 7-5-10(A). 2014 Act No. 196, § 2. The Act explicitly stated that the powers and duties of the county boards of registration, election commission, and combined boards “devolved upon” the county boards of voter registration and elections in Section 7-5-10(C) as follows:

The previous offices of county election commissions, voter registration boards, or combined boards are abolished. The powers and duties of the county election commissions, voter registration boards, or combined boards are devolved upon the board of voter registration and elections for each county created in subsection (A). Those members currently serving on the county election commissions, voter registration boards, or combined boards shall continue to serve in a combined governing capacity until at least five members of the successor board members established under this section are appointed and qualify.

2014 Act No. 196, §3 (emphasis added).

The acts discussed above do not include a statement of legislative intent, either express or implied, to fundamentally transform the county boards into state boards. In fact, 2008 Act No. 312 expressly states it was meant to be “a continuation of acts passed by the General Assembly”

rather than “creat[ing] new statutory authority.” While 2011 Act No. 17 combined the two bodies, there is no evidence of legislative intent to create the combined board as a state agency. Finally, 2014 Act No. 196 devolved the powers and duties of the prior bodies on the board of voter registration and elections for each county. Although the boards of voter registration and elections are supervised by the Executive Director of the State Election Commission, the board members are appointed and removed by the Governor upon the recommendation of the legislative delegation of the counties. See S.C. Code Ann. § 7-5-10 (Supp. 2016). The board members are selected from the “qualified electors of that county” in which they would serve. Id. Ultimately, while the acts discussed above have abolished the county election commissions and voter registration boards and granted the State Election Commission a supervisory role over the replacement county boards of voter registration and elections, there is no statement of legislative intent that the new county boards were created as state agencies rather than county agencies.

This Office’s prior opinions have addressed why the former county election commissions and county boards of registration and election were considered “county offices” even though their respective commissions and members are not appointed nor supervised by county government.

Section 4–9–30(7) provides that county council is authorized

(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. 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. (emphasis added).

Section 7–13–70 expressly provides that commissioners of election are appointed by the Governor upon the recommendation of the Senator and at least half of the members of the House of Representative from the county. Since the appointing authority for county election commissioners is by an 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.

Op. S.C. Atty. Gen., 1989 WL 406131 (April 6, 1989); see also Op. S.C. Atty. Gen., 1991 WL 633035 (August 8, 1991) (opining magistrates court personnel are “county employees” according to S.C. Code Ann. §4-9-30(7) as personnel “under the direction of... an official appointed by an

authority outside county government.”). Further, this Office’s March 16, 1998 opinion explained as follows:

As an initial matter, County Boards of Registration and Election are responsible for, among other things, the registration of electors who apply for registration in the county and the carrying out of the election in the county. S.C. Code Ann. § 7-5-30; § 7-13-70. This Office has previously concluded that county election commissioners are county officers, despite the fact that they are appointed by an authority “outside county government.” Op. Atty. Gen. dated April 6, 1989. It follows that county boards of registration and election, as the units responsible for the conduct of the election process in the county, are county offices. The fact that the county government does not have the power to appoint members of the board does not change their identity as county offices.

Op. S.C. Atty. Gen., 1998 WL 196482 (March 16, 1998). As discussed above, some of the statutes referred to in these prior opinions have been amended or repealed. However, the previous bodies’ powers and duties were “devolved upon the board of voter registration and elections for each county.” S.C. Code Ann. 7-5-10(C) (Supp. 2016). Further, those duties which are explicitly stated are limited to providing services to those “electors who apply for registration in the county” and “qualified electors of their respective county.” S.C. Code Ann. 7-5-30. Clearly, the jurisdictional limits as well as the population which these bodies serve are not statewide, but rather continue on a countywide basis.

As discussed in the opinions quoted above, while board of voter registration and elections for each county are not created or appointed by a county governing body, this does not prevent such board members from being regarded as county officers. S.C. Code Ann. § 4-9-30(7) charges county governing bodies with “develop[ing] personnel system policies and procedures for county employees... 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.” However, this statute also expressly forbids county governing bodies from exercising “[t]his employment and discharge authority [over]... personnel employed in departments or agencies under the direction of an elected official or an official appointed by an authority outside county government.” Id. (emphasis added). Therefore, Section 4-9-30(7) provides that there are county agencies under the direction of officials who are appointed by an authority outside of county government. It is this Office’s opinion that a court likely would find the board of voter registration and elections for each county to be county agencies whose board members are appointed by an authority outside county government.

- II. Is a county responsible for providing legal services for its respective county board of voter registration and elections, or for otherwise appropriating sufficient funds to allow a county board of voter registration and elections to obtain legal services? If not, what entity is responsible for providing such services?**

It is this Office's opinion that the governing body of a county is responsible for either providing legal services for its respective county board of voter registration and elections, or for otherwise appropriating sufficient funds to allow a county board of voter registration and elections to obtain legal services. This Office's March 16, 1998 opinion to McCormick County Attorney, G.P. Callison, Jr., squarely addressed this issue. Op. S.C. Atty. Gen., 1998 WL 196482 (March 16, 1998). Mr. Callison asked "whether McCormick County is responsible for providing legal advice to or paying for the legal representation of the McCormick County Board of Election and Registration." Id. As discussed above, the opinion reaffirmed this Office's prior opinions which found that such bodies are county offices.

The Board of Election and Registration of McCormick County was created by Act No. 178 of 1995. This Act provides that there are five members of the board who must be appointed upon recommendation of a majority of the McCormick County Legislative Delegation, including the Senator. Section 1(A). The Act further provides that the board shall receive an annual appropriation from the governing body of McCormick County in an amount not less than that received for the operation of both the commissioners of election and board of registration for fiscal year 1994-1995. Section 1(E).

...

[S]ince the Board of Election and Registration is a county office, McCormick County would have the same responsibility in providing legal advice or paying for legal representation for the Board as it would for any other county agency or office. In many counties, the county attorney by county ordinance or contract, represents county governmental agencies in civil matters. Since I do not know the exact duties of the McCormick County Attorney, I am unable to state whether such is the case in McCormick County. If such is the case, then the county attorney would represent the Board of Election and Registration as it would any other county agency. If the county attorney is not authorized to represent county governmental agencies such as the Board, Act No. 178, Section 1(E) provides that the McCormick County governing body shall provide appropriations for the operation of the Board. The operation of the Board would naturally include the need for legal representation for legal conflicts arising out the Board's duties. Therefore, such legal expenses would fall within the scope of appropriations by the county governing body for the operation of the Board. Accordingly, whether done so by the county attorney or otherwise, McCormick County would be responsible for providing for legal representation of the Board, as it would any county agency or office.

Id. As discussed above, it is this Office's opinion that a court likely would find the board of voter registration and elections for each county to be county agencies and would likewise find their members to be county officers. Therefore, the above opinion would be equally applicable

to these county boards, unless there has been a change in law which compels a different conclusion.

As discussed more fully above, there have been a number of relevant changes to the South Carolina Code of Laws. However, these changes do not contain a statement of legislative intent, either express or implied, that would transfer the “responsib[ility] for providing for legal representation of the Board” from a county’s governing body. *Id.* Like Act No. 178 of 1995 which established an annual appropriation amount for the McCormick County Board of Election and Registration, the Board of Elections and Voter Registration of Richland County was also provide a minimum annual appropriation in 2011 Act No. 17, § 1. The act codified Section 7-27-405(H) which provided, “The annual budget for the Board of Elections and Voter Registration of Richland County may not be less than the average of the two annual budgets for the Charleston County and Greenville County Boards of Election and Voter Registration for the prior fiscal year.” However, following the decision in *Courson*, 2014 Act No. 196 repealed Chapter 27 of Title 7 in its entirety. As a result of repealing Chapter 27, the appropriation amounts provided for each county’s respective election commissions, voter registration boards, or combined boards, including Section 7-27-405(H), were removed from the South Carolina Code of Laws.

While we have been unable to locate a replacement provision in the South Carolina Code of Laws which provides for annual appropriations to the county boards of voter registration and elections, we do not interpret this to mean that a county governing body no longer appropriates funding for such bodies.<sup>2</sup> If the General Assembly intended for the State to assume such responsibility, or to otherwise assign responsibility to another political subdivision, it is this Office’s opinion that it would have done so expressly. In fact, the title and text of Section 7-5-40 implies that expenses related to registration are incurred by the counties.

Each county shall receive an annual supplement from the State to help defray the expenses of personnel in keeping the registration office open as required in § 7-5-130. Counties with populations from twenty-five thousand to one hundred

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<sup>2</sup> The South Carolina Supreme Court has held that a county must “pay reasonable compensation” from county funds for offices created by the General Assembly even when a pay scale had not been established by statute. In *Kramer v. Cty. Council for Dorchester Cty.*, 277 S.C. 71, 282 S.E.2d 850 (1981), the Court held:

It is certainly competent for the General Assembly to mandate county funding of county agencies, as in Section 4-1-80, Code. Likewise the General Assembly has the authority to direct counties to support with county funds the courts of the unified system.

...

We therefore hold that Dorchester County shall determine and pay reasonable compensation to the respondent from the general funds of the County until such reasonable time as the General Assembly shall enact a uniform pay scale for masters-in-equity in South Carolina.

277 S.C. 71, 74-76, 282 S.E.2d 850, 852-53. See also *Op. S.C. Atty. Gen.*, No. 85-15, 1985 WL 165986 (February 22, 1985) (“Aiken County cannot refuse to provide compensation for the individual who holds a magisterial office in Aiken County which has been established by the General Assembly.”).

thousand shall receive twice the amount of such supplement; counties with populations from one hundred thousand one to two hundred thousand shall receive three times the amount of the supplement; counties with over two hundred thousand shall receive four times the amount of the supplement. Such supplements shall be in such amounts as provided for in the annual general appropriations act of the State.

S.C. Code Ann. § 7-5-40 (Supp. 2016) (emphasis added). The express language used to describe the purpose of the State's annual supplement is to "defray the expenses" of each county. Black's Law Dictionary defines "defray" to mean "to reduce (expenses that someone else has incurred) by contributing money." DEFRAID, Black's Law Dictionary (10th ed. 2014). The statutory language indicates that counties incur the expenses of providing these registration services and the State annually appropriates a supplement to each county to assist with these operations based upon the population of the county. Because the South Carolina Code of Laws maintains that counties are responsible for the expenses of keeping registration offices open, it is this Office's opinion that each county governing body is responsible for the expenses of its respective county board of voter registration and elections. As our March 16, 1998 opinion stated, these expenses "naturally include the need for legal representation for legal conflicts arising out the Board's duties." Op. S.C. Atty. Gen., 1998 WL 196482 (March 16, 1998). Therefore, it is this Office's opinion that the governing body of a county is responsible for either providing legal services for its respective county board of voter registration and elections, or for otherwise appropriating sufficient funds to allow a county board of voter registration and elections to obtain legal services.

**III. Is a county responsible for paying settlement and judgment amounts that are the result of litigation brought against the board? If not, what entity is responsible for paying such settlement and/or judgment amounts?**

It is this Office's opinion that the governing body of a county is responsible for appropriating sufficient funds to allow a county board of voter registration and elections to pay settlement and judgment amounts which arise out of the board's duties. As discussed in the response to question two, each county governing body is responsible for the expenses of its respective county board of voter registration and elections. Just as those expenses "naturally include the need for legal representation for legal conflicts arising out the Board's duties," so too would the payment of settlement and judgment amounts that result from such representation "fall within the scope of appropriations by the county governing body for the operation of the Board." Op. S.C. Atty. Gen., 1998 WL 196482 (March 16, 1998).

**IV. Does a county have the authority to prevent a county board of voter registration and elections from paying legal fees and settlements out of the board's own budget by passing an ordinance or resolution which prohibits funds already appropriated by the county from being used for such purposes?**

Whether a county has the authority to adopt an ordinance or resolution which prevents a county board of voter registration and elections from paying legal fees, settlements, and judgements out of county funds appropriated to such a board is addressed under a two-step analysis established by the South Carolina Supreme Court in Foothills Brewing Concern, Inc. v. City of Greenville, 377 S.C. 355, 660 S.E.2d 264 (2008). This Office's March 14, 2017 opinion discusses the deference afforded county governments in adopting an ordinance and when such an ordinance will be found invalid as follows:

Initially, we note that the courts have consistently recognized the basic principle that a local ordinance, just like a state statute, is presumed to be valid as enacted unless or until a court declares it to be invalid. See McMaster v. Columbia Bd. of Zoning Appeals, 395 S.C. 499, 504, 719 S.E.2d 660, 662 (2011) ("A municipal ordinance is a legislative enactment and is presumed to be constitutional."), citing Town of Scranton v. Willoughby, 306 S.C. 421, 422, 412 S.E.2d 424, 425 (1991); Casey v. Richland County Council, 282 S.C. 387, 320 S.E.2d 443 (1984); Op. S.C. Atty. Gen., 2003 WL 21471503 (June 4, 2003). An ordinance will not be declared invalid unless it is clearly inconsistent with general state law. Hospitality Ass'n of S.C. v. County of Charleston, 320 S.C. 219, 464 S.E.2d 113 (1995). Only the courts, and not this Office, possess the authority to declare such an ordinance invalid. Therefore, [an ordinance will] be presumed valid and must be followed until a court sets it aside or subsequent legislative action revokes or amends its application.

In Foothills Brewing Concern, Inc. v. City of Greenville, 377 S.C. 355, 660 S.E.2d 264 (2008), the Supreme Court of South Carolina described the two-step process to determine whether a local ordinance is valid. "First, the Court must consider whether the [county] had the power to enact the ordinance. ... [Second], if the [county] had the power to enact the ordinance, the Court must then determine whether the ordinance is consistent with the Constitution and the general law of the State." Id. at 361. The Constitution of South Carolina "mandates that the legislature provide by general law the powers, duties, and functions of counties and municipalities. S.C. Const. art. VIII, §§ 7 and 9." Joytime Distributors & Amusement Co. v. State, 338 S.C. 634, 647, 528 S.E.2d 647, 654 (1999). The General Assembly has provided such power to enact local legislation as follows:

All counties of the State, in addition to the powers conferred to their specific form of government, have authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of these powers in relation to health and order in counties or respecting any subject as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order, and good government in them. The powers of a county must be liberally construed in favor of the county and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties.

S.C. Code Ann. § 4-9-25 (emphasis added).

Op. S.C. Atty. Gen., 2017 WL 1095386, at \*1–2 (March 14, 2017).

The request letter notes that the Richland County Council added Section 1-16 to the Richland County Code by ordinance. Section 1-16 reads as follows:

Notwithstanding any other ordinance, Richland County shall not pay the legal fees incurred by any board, committee, commission or similar entity that is not created by County ordinance or whose members are not appointed by the Richland County Council. Further, Richland County shall not pay any legal judgments ordered against, or any settlement amounts proposed by or on behalf of any board, committee, commission or similar entity that is not created by County ordinance or whose members are not appointed by the Richland County Council. This ordinance only applies to boards, committees, commissions or similar entities, and does not apply to offices under the direction of County elected officials or offices under the direction of officials appointed by the Richland County Council or the Richland County Administrator.

As discussed in our response to question one, this Office has consistently held that the board of voter registration and elections for each county and their predecessor bodies are county agencies whose members are “appointed by an authority outside county government” as described in S.C. Code Ann. § 4-9-30(7). Therefore, Richland County Code Section 1-16 would apply to the Richland County Board of Voter Registration and Elections, as well as a number of other similarly appointed county entities. Again, S.C. Code Ann. § 7-5-40 states that the State annually appropriates a supplement to “defray the expenses” each county incurs to “keep[] the registration office open.” As discussed above, it is this Office’s opinion that the governing body of a county is responsible for either providing legal services its respective county board of voter registration and elections, or for otherwise appropriating sufficient funds to allow a county board

of voter registration and elections to obtain legal services, as well as appropriating sufficient funds to allow a county board of voter registration and elections to pay settlement and judgment amounts which arise out of the board's duties. Plainly, an ordinance, such as Section 1-16, which purports to prohibit a county governing body from providing such appropriations would be inconsistent with Office's interpretation of the general law of the State. Therefore, it is this Office's opinion that a court would find a county does not have the authority to adopt an ordinance or resolution which prevents a county board of voter registration and elections from paying legal fees, settlements, and judgements out of county funds appropriated to such a board as such an ordinance would be inconsistent with the general law of the State. Foothills Brewing Concern, supra. Even so, Section 1-16 is presumed to be valid unless or until a court declares it to be invalid.

### **Conclusion**

It is this Office's opinion that a court likely would find the board of voter registration and elections for each county to be county agencies whose board members are appointed by an authority outside county government according to S.C. Code Ann. § 4-9-30(7). S.C. Code Ann. § 7-5-40 states that the State annually appropriates a supplement to "defray the expenses" each county incurs to "keep[] the registration office open." As this Office's March 16, 1998 opinion stated, these expenses "naturally include the need for legal representation for legal conflicts arising out the Board's duties." Op. S.C. Atty. Gen., 1998 WL 196482 (March 16, 1998). Therefore, it is this Office's opinion that the governing body of a county is responsible for either providing legal services for its respective county board of voter registration and elections, or for otherwise appropriating sufficient funds to allow a county board of voter registration and elections to obtain legal services, as well as appropriating funds for the payment of settlement and judgment amounts that result from such representation. It is this Office's opinion that a court would find a county does not have the authority to adopt an ordinance or resolution which prevents a county board of voter registration and elections from paying legal fees, settlements, and judgements out of county funds appropriated to such a board as such an ordinance would be "[in]consistent with the general law of the State." Foothills Brewing Concern, Inc. v. City of Greenville, 377 S.C. 355, 660 S.E.2d 264 (2008).

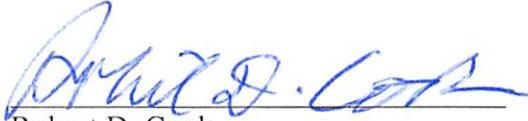
Sincerely,



Matthew Houck  
Assistant Attorney General

Rokey W. Suleman, II  
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December 18, 2017

REVIEWED AND APPROVED BY:

A handwritten signature in blue ink, appearing to read "Robert D. Cook", is written over a horizontal line.

Robert D. Cook  
Solicitor General