



ALAN WILSON
ATTORNEY GENERAL

November 7, 2019

Mr. Steve Willis
County Administrator
Lancaster County
P.O. Box 1809
Lancaster, South Carolina 29721

Dear Mr. Willis:

We received your letter addressed to Attorney General Alan Wilson requesting an opinion “regarding whether a County can properly deduct money from an elected official’s budget in order to recoup the funds it was required to expend to hire an outside consultant to perform duties of the elected official when the elected official is unable or unwilling to perform their statutorily prescribed duties.”

Law/Analysis

Section 4-9-25 of the South Carolina Code (Supp. 2019), passed as part of the Home Rule legislation, gives counties broad authority. This provision states “[t]he 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. In section 4-9-30 of the South Carolina Code (1986 & Supp. 2019), the Legislature provided an extensive list of enumerated powers of county governments including the power to “make appropriations for functions and operations of the county” In addition, section 4-9-140 of the South Carolina Code (1989) directs counties to adopt an annual budget for the operation of the county. Thus, decisions on how county funds shall be appropriated are not only within a county’s authority, but are the duty of the county’s governing body.

However, we note the authority of a county’s governing body is not without limitations. As you mentioned in your letter, in a 2011 opinion this Office opined that a county council “cannot interfere with any of the duties and responsibilities given to elected county officials under State law.” Op. Att’y Gen., 2011 WL 1740743 (Apr. 29, 2011). We considered that section 4-9-30(7) gives county councils the authority to employ and discharge county personnel, but states “[t]his 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.” Based on this provision and in accordance with prior opinions, this Office determined “with regard to the budgets of elected officials, county councils ‘cannot so

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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.'" Id. (quoting Op. Att'y Gen., 1978 WL 34687 (S.C.A.G. Feb. 7, 1978)). See also, Op. Att'y Gen., 2007 WL 419432 (S.C.A.G. Jan. 8, 2007) (finding reductions to budget allocations for the salaries of employees of public officials may not be reduced to "the extent that they cause the office of the public official to not function properly.").

In a 2007 opinion, we again addressed a county council's authority in regard to the budget of an elected official. Op. Att'y Gen., 2007 WL 419432 (S.C.A.G. Jan. 8, 2007). In that opinion, the county council was considering overall reductions in its budget, which it expected to result in reductions in staff working in county operations and for elected officials. Id. We considered the county council's inability to terminate employees of elected officials under section 4-9-30(7) and the counties broad authority to appropriate funds. Id.

With regard to the question at hand, we certainly recognize the Legislature's intent to vest budgetary authority in the county's governing body. However, based on the opinions cited above, such authority is limited with regard to the reduction in appropriations to the office of an elected official. Clearly, such reductions may not be to the extent that prevents the official's office from functioning properly. Furthermore, because counties are prohibited by section 4-9-30(7) from terminating the employees of public officials, we are doubtful as to whether a court would allow counties to indirectly terminate an employee by abolishing their position through a reduction in appropriations for that position.

In this instance, the determination of whether the reductions you mention in your letter will result in the affected offices' inability to function properly is clearly a question of fact. Moreover, whether or not the reduction in funding to such offices is in fact a termination is also a question of fact. As we stated on numerous occasions, only a court, as the finder of fact, may ultimately resolve factual issues. See, e.g., Op. S.C. Atty. Gen., September 29, 2006. Thus, this Office is precluded from making such determinations.

Id.

In the situation you describe, the county is considering hiring a consultant to perform the functions an elected official. As we stated in 2011, a county council "cannot interfere with any of the duties and responsibilities given to elected county officials under State law." Op. Att'y Gen., 2011 WL 1740743 (Apr. 29, 2011). It is the responsibility of the elected official to perform his or her duties. Therefore, we initially question whether the county has the authority to hire a consultant to perform the duties of the elected official.

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Nonetheless, as we explained in our prior opinions, county governing bodies have broad authority to appropriate money for the functions and operations of the county, which could include hiring a consultant. However, our prior opinions make clear that a county cannot make deductions to the elected official's budget that results in preventing the office from functioning or indirectly abolishing the official's office. If for instance, the reductions in the budget aim to reallocate the elected official's salary to a consultant, this could be viewed by a court as terminating the office of the elected official.

We are not apprised as to how the county intends deduct the funds from the official's budget or what impact that will have on the function of the elected official's office. Moreover, as we stated in our 2007 opinion, determining whether or not budget reductions will result in preventing the office from functioning, abolishing the office, or terminating an employee of the office all involve questions of fact. Op. Att'y Gen., 2007 WL 419432 (S.C.A.G. Jan. 8, 2007). Only a court can make these factual determinations. Id. Therefore, we cannot opine conclusively on whether a county can generally deduct money from an elective official's budget to recoup fees paid to a consultant performing tasks normally performed by the official.

Conclusion

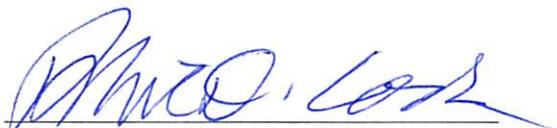
Because your question is factual in nature, we cannot address it fully in an opinion. Nonetheless, we continue to advise that the Legislature vested county governing bodies with broad budgetary authority. Therefore, we believe appropriating additional funds to pay for personnel performing county functions is within a county's authority. However, in keeping with our prior opinions, we believe a county cannot interfere with the duties of an elected official or use its authority to appropriate funds to effectively terminate the office of the elected official.

Sincerely,



Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General