



ALAN WILSON
ATTORNEY GENERAL

August 17, 2020

David L. Tedder, Esq.
County Attorney
Jasper County
Post Office Box 420
Ridgeland, South Carolina 29936

Dear Mr. Tedder:

We received your letter requesting an opinion of this Office concerning “the duties, responsibilities and liability of the Sheriff on the one hand, and the recourses and duties of County Council on the other, when it is determined that the Sheriff has spent more than the Council appropriated budget for the Sheriff’s Office.” You explain these questions involve the following:

1. Expenditures by the Sheriff of funds for overtime for deputies beyond the budgeted amounts.
2. Expenditures by the Sheriff for deputy salaries (including pay raises, promotions) that total beyond the amount authorized.
3. Expenditures by the Sheriff in excess of the amounts budgeted for vehicles and related expenditures.

You question “whether these over-expenditures, which were not authorized by Council, create a liability on the Sheriff’s part, and what remedies or other courses of action are available to Council.”

Law/Analysis

The South Carolina Constitution provides with respect to political subdivisions, which includes counties:

(b) Each political subdivision of the State as defined in Section 14 of this article and each school district of this State shall prepare and maintain annual budgets which provide for sufficient income to meet its estimated expenses for each year. Whenever it shall happen that the ordinary expenses of a political subdivision for any year shall exceed the income of such political subdivision, the governing body of such political subdivision shall provide for levying a tax in the ensuing year sufficient, with other sources of income, to pay the deficiency of the preceding year together with the estimated expenses

for such ensuing year. The General Assembly shall establish procedures to insure that the provisions of this section are enforced.

S.C. Const. art. X, § 7 (2009).

Section 4-9-30(5)(a) of the South Carolina Code (Supp. 2019) gives county councils the authority to

to assess property and levy ad valorem property taxes and uniform service charges, including the power to tax different areas at different rates related to the nature and level of governmental services provided and make appropriations for functions and operations of the county, including, but not limited to, appropriations for general public works, including roads, drainage, street lighting, and other public works; water treatment and distribution; sewage collection and treatment; courts and criminal justice administration; correctional institutions; public health; social services; transportation; planning; economic development; recreation; public safety, including police and fire protection, disaster preparedness, regulatory code enforcement; hospital and medical care; sanitation, including solid waste collection and disposal; elections; libraries; and to provide for the regulation and enforcement of the above

(emphasis added). This provision gives county councils the authority to appropriate funds for the operations of sheriff's departments.

The relationship between county councils and the sheriffs' offices they fund is complex because sheriffs are not only the chief law enforcement officers for the county, but are also elected constitutional officers. S.C. Const. art. V, § 24 (2009). Furthermore, our courts recognize "under South Carolina law, the sheriff and sheriff's deputies are State, not county, employees." Edwards v. Lexington Cnty. Sheriff's Dep't, 386 S.C. 285, 287 n. 1, 688 S.E.2d 125, 127 n. 1 (2010). In several opinions, this Office opined that county councils are restricted from using the appropriations process to effectively remove a deputy from his or her position because "the county council is not empowered to abolish [them] directly." Op. Att'y Gen., 1987 WL 245480 (S.C.A.G. Aug. 3, 1987).

As you mentioned in your letter, this Office issued an opinion in 1989 addressing a sheriff's expenditures in excess of the amount allocated. Op. Att'y Gen., 1989 WL 406145 (S.C.A.G. May 8, 1989). In that opinion, we acknowledged the county council's authority to appropriate funds for the operation of a sheriff's office, but stated the county council cannot decrease funding to prevent the office from functioning.¹ Id. Ultimately, we concluded that "any action

¹ We cited to a proviso in section 4-9-30 stating

by the Berkeley County Council through its budgetary process cannot interfere with the Sheriff's role as chief law enforcement officer in his county." Id. We also noted in regard to a question concerning the county council's ability to limit overtime expenditures, "any requirements of federal law must be observed," but advised questions regarding this matter are better addressed by the United States Department of Labor. Id. In accordance with this opinion, we continue to believe a county council does not have authority through the budget process to interfere with the operations of a sheriff's department.

Nonetheless, sheriffs' offices are restricted to the appropriations they receive. Section 8 of article X of the South Carolina Constitution (2009) states "[m]oney shall be drawn from the treasury of the State or the treasury of any of its political subdivisions only in pursuance of appropriations made by law." Moreover, when a county council adopts a budget appropriating funds to a sheriff's department, that budget has the force of law because it is a legislative action passed by ordinance. See S.C. Code Ann. § 4-9-120 (year) ("The council shall take legislative action by ordinance . . .").

In an opinion issued by this Office in 2016, we addressed the ability of a county supervisor to expend funds in excess of those appropriated by the county council. Op. Att'y Gen., 2016 WL 3946153 (S.C.A.G. July 5, 2016). Citing to section 8 of article X and to section 4-9-120, we determined "if a county supervisor spends public money in a manner that is contrary to an ordinance of the county, then he or she has acted unlawfully by exceeding his or her legal authority." Id. Furthermore, we opined "expending public money in excess of the budgeted amount is an unlawful act." Id. See also Op. Att'y Gen., 2007 WL 419432 (S.C.A.G. Jan. 8, 2007) ("[I]f a public official were to expend funds that were not appropriated, such action would be in violation of the South Carolina Constitution."). However, because "determining whether the county supervisor you refer to in your letter actually acted unlawfully would require a factual determination," we declined to make a determination of whether that particular county supervisor acted unlawfully. Id. We also declined to address whether criminal charges could be levied against the county supervisor. Id. But, relying on several prior opinions, we stated in regard to civil liability "it is the opinion of this Office that a court could find a public official personally liable for spending public funds in excess of the budgeted amount, even if the excess funds are spent for a public purpose." Id.

if any appropriation relative to police protection would result in reorganization or restructuring of a sheriff's department or, if any appropriation relative to police protection would limit the duties of the sheriff or provide for police protection duplicating the duties and functions presently being performed by a sheriff, it shall not take effect until the qualified electors of the county shall first approve the appropriation by referendum called by the governing body of the county.

Id. (quoting S.C. Code Ann. § 4-9-30(5)). Subsequent to that opinion, the Legislature removed this proviso from section 4-9-30. 1991 S.C. Acts 114. Nonetheless, we believe a county council remains restricted from decreasing the funding of a sheriff's office which would result in preventing that office from functioning.

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You informed us that Jasper County operates under a Council-Administrator form of government and that it generally receives budget requests for the year from its elected constitutional officers. However, you state that “[i]t has come to light there have been substantial over-expenditures in several categories of appropriations to the Sheriff’s Department.” Your letter mentions over-expenditures related to salaries and overtime as well as vehicle expenses. Some of these relate to unexpected circumstances including hurricane Dorian, but you note these only account for a “minor part of the over-expenditures which concern Council.” Thus, you wish to know “what remedies or other courses of action are available to Council.”

Based on our prior opinions, County Council must appropriate funds to facilitate the proper functioning of the Sheriff’s Office. We believe this should include amounts appropriate for the proper staffing and equipment. However, the Sheriff is restrained from expending public funds in excess of the amount appropriated. If the Sheriff’s expenditures exceed the amount appropriated, a court could find such expenditures as unlawful, but “a due care standard of Chandler v. Britton would apply.” Op. Att’y Gen., 2016 WL 3946153 (S.C.A.G. July 5, 2016) (quoting Op. Att’y Gen., 2003 WL 21040136 (February 21, 2003)). Thus, “liability would turn in part on a factual determination that the official acted at least negligently in exceeding the budgetary authority,” which is beyond the scope of an opinion of this Office. Id. Accordingly, for County Council to hold the Sheriff personally responsible, you would need to demonstrate to a court that he or she was negligent in exceeding the appropriations made by County Council.

Conclusion

County Council has both the authority and the responsibility to make appropriations sufficient for the proper funding of the Sheriff’s Department. In addition, consistent with prior opinions, this Office believes the County Council may not use its budgetary authority to interfere with the operating decisions of the Sheriff’s Department. However, once County Council adopts a budget, expenditures over this amount could be viewed by a court as unlawful in violation of both the budget ordinance and section 8 of article X of the South Carolina Constitution. If a court finds the Sheriff acted negligently in expending funds over the amount appropriated, he or she could be held personally liable.

Sincerely,



Cydney Milling
Assistant Attorney General

David L. Tedder, Esq.
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REVIEWED AND APPROVED BY:

A handwritten signature in black ink, appearing to read "R. D. Cook", written over a horizontal line.

Robert D. Cook
Solicitor General