



ALAN WILSON
ATTORNEY GENERAL

December 5, 2023

The Honorable Sharon W. Stagers
Williamsburg County Clerk of Court
Williamsburg County Courthouse
147 W. Main St.
Kingstree, SC 29556

Dear Ms. Stagers:

We received your letter requesting an Attorney General's opinion on several questions related to a clerk of court's salary and expenditure of Title IV-D funds. By way of background, you informed us:

I was given a raise in 2021 that was approved by the county supervisor who served during that time. . . . In 2023, under the current supervisor, my raise was taken away. His argument is that I did not have a raise, but a salary supplement. He states that a supervisor alone cannot approve a raise, in his opinion. . . . The increase in salary was shown on my check stubs as my regular salary and not a separate supplement.

Your letter contains six questions, which we will address in turn.

Law/Analysis

1. Was my salary reduced lawfully?

We begin by noting this Office is unable to issue an advisory opinion to determine facts. As we have stated in prior opinions, “[b]ecause this Office does not have the authority of a court or other fact-finding body, we are not able to adjudicate or investigate factual questions.” Op. S.C. Att’y Gen., 2006 WL 1207271 (S.C.A.G. April 4, 2006) (alteration in original) (quoting Op. S.C. Att’y Gen., 1989 WL 406130 (April 3, 1989)). Therefore, because it would involve a determination of facts, we cannot render an opinion as to whether your salary was reduced lawfully.

2. Can the salary of an elected official be reduced during their term?

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It is our understanding that Williamsburg County operates under a council-supervisor form of county government pursuant to sections 4-9-410 to -440 of the South Carolina Code (2021 & Supp. 2023), which is included in the body of legislation known as the Home Rule Act.¹ Section 14-17-10 of the South Carolina Code (2017) provides for the election of clerks of the court of common pleas in each county by the qualified electorate. We address your remaining questions accordingly.

Section 8-21-300 of the South Carolina Code (2019) governs the salaries of clerks of court.

The clerks of court and registers of deeds of the several counties *shall receive such salaries for performance of their duties as may be fixed by the governing body of the county*, which shall not be diminished during their terms of office, and such compensation shall not be measured or affected by the fees and costs received by such officers under the provisions of this article. All such fees and costs received under the provisions of this article by such officials of any county shall be accounted for and paid into the general fund of the county as directed by the governing body thereof.

§ 8-21-300 (emphasis added). Section 4-9-30 of the South Carolina Code (2021) enumerates the powers to be exercised by county governments. Subsection (7) provides, “The salary of those officials elected by the people may be increased but may not be reduced during the terms for which they are elected, . . .” § 4-9-30(7). In Greenwood County Council v. Brooks, 362 S.C. 500, 504, 608 S.E.2d 872, 874 (2005), our Supreme Court held sections 4-9-30(7) and 8-21-300 prohibit county councils “from reducing an elected official’s salary during the terms *for which they are elected*.” (emphasis added). Therefore, a clerk of court’s salary—as set by the governing body of the county—may not be reduced during the term for which they are elected.²

3. Can a county supervisor alone approve an increase in salary for an elected official?

¹ S.C. Code Ann. §§ 4-9-10, *et seq.* (2021 & Supp. 2023).

² We note section 8-15-65(A)(1) of the South Carolina Code (2019) provides that the General Assembly shall appropriate annual salary supplements for county clerks of court. However, as we noted in a 2022 opinion, subsection (B) of the statute evinces the General Assembly’s intention “for money appropriated for county officer salary supplements to be used as supplement to, not a replacement for, the county funds used for these positions.” Op. S.C. Att’y Gen., 2022 WL 1020398 (S.C.A.G. March 28, 2022); § 8-15-65(B) (“The amounts appropriated for salary supplements pursuant to subsection (A) must include both salary and related employer contributions and are in addition to amounts provided as compensation for these officials by counties. To the extent that compensation for these officers is reduced by a county or there is any other reduction of expenditures in the operations of their offices, a corresponding reduction must be made in the distribution otherwise due the county pursuant to Chapter 27 of Title 6, the State Aid to Subdivisions Act.”).

As previously cited, pursuant to section 8-21-300, the salary of the clerk of court must be set by the governing body of the county. *See Bales v. Aughtry*, 302 S.C. 262, 263-64, 395 S.E.2d 177, 178 (1990) (“The plain language of [section 4-9-30(7)] limits the county government's power to employ or discharge elected officials or those under their direction; it does not restrict *the county government's* ability to determine compensation for elected officials except to prohibit reduction of an elected official's salary during his term of office.” (emphasis added)); *see also Op. S.C. Att’y Gen.*, 2023 WL 7929599 (S.C.A.G. November 7, 2023). Moreover, section 4-9-420(5) gives the county supervisor the power and duty “to supervise the expenditure of funds *appropriated by council.*” (emphasis added). As we stated in a 2016 opinion,

Our Office has opined that “[w]hen the Council properly enunciates policies, the supervisor's only function is to carry out such policies.” *Op. S.C. Att’y Gen.*, 1970 WL 16805 (April 22, 1970). Moreover, our State's [C]onstitution mandates that “[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.” S.C. Const. art. X, § 8. Therefore, 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.

Op. S.C. Att’y Gen., 2016 WL 3946153 (S.C.A.G. July 5, 2016). Based on the foregoing, we believe a court would determine the authority to approve an increase in the clerk of court’s salary rests solely with the governing body of the county.

4. Is there a statute that states how an elected official may ask for and receive an increase in salary?

Consistent with the provision cited previously, section 8-21-300 provides that the salary of the clerk of court must be set by the governing body of the county. In *Greenwood County Council*, 362 at 504, 608 S.E.2d at 874, our Supreme Court noted, “The salary pertaining to an [elected] office is an incident to the office itself and not to the individual who holds the office.” (citing *Gaffney v. Mallory*, 186 S.C. 337, 341, 195 S.E. 840, 844 (1938)). Finding no statutory authority outlining a method by which a clerk of court may request a salary increase, we believe a court would determine the decision whether to increase a clerk of court’s salary rests solely in the governing body’s discretion.

5. Can a clerk of court and their staff receive an increase in salary from Title IV-D funds?

I am enclosing a copy of a previous opinion of this Office that addresses whether a clerk of court may supplement his or her salary and/or the salaries of county employees within the clerk’s office with Title IV-D funds. Initially, we concluded a clerk of court may supplement his or her employees’ salaries with Title IV-D funds; however, we determined the clerk of court must not provide such supplements after the work has been performed and should only be used to pay for salaries attributable to the establishment, collection, and enforcement of child support obligations. *Op. S.C. Att’y Gen.*, 2023 WL 7929599 (S.C.A.G. November 7, 2023). We further concluded,

Finding no statutory authority allowing Title IV-D funds to be used to supplement the salaries of clerks of court and a strong presumption in favor of clerks receiving the salary set for them by their county governing body, we are skeptical that a court would allow a clerk of court to designate a supplement for themselves. Nevertheless, we believe Title IV-D funds could be used to fund a portion of the clerk of courts salary attributable to the establishment, collection, and enforcement of child support obligations.

Id.

6. What authority does a county council and supervisor have over an elected official?

We have recognized in previous opinions that “[a] county council is generally considered as having only limited authority in dealing with the authority or duties of an elected official, . . .” Op. S.C. Att’y Gen., 2006 WL 1207277 (S.C.A.G. April 20, 2006); *see also* § 4-9-30(7); Op. S.C. Att’y Gen., 2006 WL 1877110 (S.C.A.G. June 19, 2006); Op. S.C. Att’y Gen., 2012 WL 1774920 (S.C.A.G. May 7, 2012). In a 2023 opinion, we concluded that under section 4-9-30(6)-(7)

. . . the clerk of court, as an elected official, has the authority to manage the personnel in his or her office including the hiring and firing of personnel without any oversight by the county. . . . We further surmised the ability to determine how many employees are needed to conduct business is included with this authority.

Op. S.C. Att’y Gen., 2023 WL 7929599 (S.C.A.G. November 7, 2023) (citing Op. S.C. Att’y Gen., 1983 WL 181693 (S.C.A.G. February 18, 1983)). However, as we noted in a 2006 opinion, section 4-9-30(7) provides the personnel employed in the Office of the Clerk of Court are subject to general “personnel system policies and procedures for county employees by which all county employees are regulated . . .” *See* Op. S.C. Att’y Gen., 2006 WL 1877110 (S.C.A.G. June 19, 2006) (quoting § 4-9-30(7)).

As to the authority of the county supervisor over an elected official, section 4-9-430 provides, “With the exception of organizational policies established by the governing body, the county supervisor shall exercise no authority over any elected officials of the county whose offices were created either by the Constitution or by general law of the State.” When interpreting a statute, the primary goal is to determine the General Assembly’s intent. *See* Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.”); Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007) (“When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning.”). The clerk of court office was created pursuant to state law and as such, the county supervisor has no authority over the clerk of court beyond organizational policies established by the county council. *See* §§ 14-17-10, *et seq.* (2017 & Supp. 2023).

Conclusion

Section 8-21-300 provides that the salary of the clerk of court, as an elected official under section 14-17-10, must be set by the governing body of the county. However, the county governing body may not reduce the clerk of court's salary during the term for which they are elected. Nevertheless, because it would involve a determination of facts, we cannot render an opinion as to whether your salary was reduced lawfully.

As previously opined by this Office, a clerk of court may supplement his or her employee's salaries with Title IV-D funds subject to certain qualifying limitations. Further, we questioned whether a court would permit a clerk of court to designate a salary supplement for themselves from Title IV-D funds. However, we concluded the governing body of the county could use Title IV-D funds to fund a portion of the clerk of court's salary so long as it is attributable to the establishment, collection, and enforcement of child support obligations.

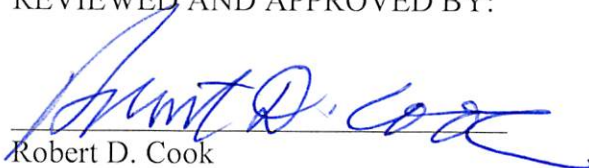
Both a county council and a county supervisor have limited authority over an elected official. Although the clerk of court has the authority to manage the personnel in his or her office, including the determination of how many employees are required to conduct business and decisions related to hiring and firing of personnel, such employees are subject to the county governing body's general personnel system policies and procedures.

Sincerely,



Elizabeth McCann
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General