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HENRY McMASTER
ATTORNEY GENERAL

May 8, 2006

The Honorable Timothy L. Nanney
Register of Deeds, Greenville County
301 University Ridge, Suite 1300
Greenville, South Carolina 29601

Dear Mr. Nanney:

We issue this opinion in response to your letter concerning the ability of a county council or county administrator to re-appropriate money budgeted for the Register of Deeds' operations. In your letter you informed us:

The ROD office has cut back through-out the 2006 budget year, saving money in several areas with the intentions of using these funds to purchase needed computer equipment. We had to do this because our budget was cut from the prior year by over 30% and all of our special project requests were denied. We have waited until the end of the year to assure we had enough money saved before we purchased the equipment. Now the administrator has suggested we can not use the funds budgeted for ROD because another department needs the money as a result of the increase in gasoline cost.

Accordingly, you request an opinion as to whether "County Council or the County Administrator have the authority to re-appropriate, in mid-budget year, money that had been budgeted for the Register of Deeds operations?"

Law/Analysis

This Office on several occasions recognized the General Assembly, through the Home Rule Act, "gave county councils broad authority and discretion to appropriate funds for county purposes." Op. S.C. Atty. Gen., August 3, 1987; Op. S.C. Atty. Gen., August 14, 1985; Op. S.C. Atty. Gen., February 7, 1978. Section 4-9-30 of the South Carolina Code (1986 & Supp. 2005), as part of the Home Rule Act, affords county councils the power levy taxes and to "make appropriations for functions and operations of the county . . ." Furthermore, section 4-9-140 of the South Carolina

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Code (1986) provides that a county council shall annually adopt "operating and capital budgets for the operation of county government and shall in such budgets identify the sources of anticipated revenue including taxes necessary to meet the financial requirements of the budgets adopted." In addition, this statute allows a county council to "make supplemental appropriations which shall specify the source of funds for such appropriations. The procedure for approval of supplemental appropriations shall be the same as that prescribed for enactment of ordinances." Id. The statute defines a "supplemental appropriation" as "an appropriation of additional funds which have come available during the fiscal year and which have not been previously obligated by the current operating or capital budget." Id. Based on this definition, a transfer of funds from one department of the county to another, as you describe in your letter, would not be a supplemental appropriation.

However, in section 4-9-140 the Legislature accounted for situations in which funds are transferred within the annual budget rather than appropriated in addition to the annual budget. The portion to which we refer states: "The provisions of this section shall not be construed to prohibit the transfer of funds appropriated in the annual budget for purposes other than as specified in such annual budget when such transfers are approved by the council." Id. We believe this provision indicates the Legislature's contemplation of mid-budget year transfers of funds. In addition, the Legislature goes further to specify that the portions of section 4-9-140 pertaining to supplemental appropriations shall not be construed to prevent the transfer of appropriations. Thus, given the broad discretion provided to county councils in appropriating funds and the Legislature's apparent recognition of a county's ability to transfer funds within its departments and agencies, we believe county councils have the authority to re-appropriate funds in a mid-budget year. However, in finding county councils have such authority, we must note such authority must be exercised in accordance with procedures established by statute and local law.

As stated above, section 4-9-140 requires the county council's approval to transfers of funds. In addition, Greenville County Council ("Council"), pursuant to its authority to adopt its own rules and order of business via section 4-9-110 of the South Carolina Code (1986), adopted ordinances dealing with the County's budgetary process. Greenville Code art. V. Encompassed in these provisions is section 7-82 dealing with "Adjustments to budget" and more specifically "interdepartmental transfers." Greenville Code art. V, § 7-82(b)(2). This section provides, in relevant part:

Interdepartmental transfers. All fund transfers from 1 department or nondepartment account to another department or nondepartment account must be approved by the county council. Transfers of funds from the non-departmental salary account to line department salary accounts can be made by the Management and Budget division to reflect merit increases and market adjustments as approved in the budget process by County Council without further action.

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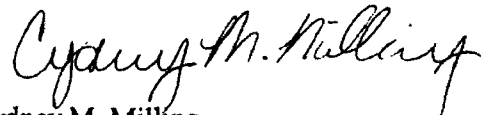
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Id. Accordingly, we find both section 4-9-140 and Greenville's local ordinances require Council's approval prior to a transfer. Therefore, Council's approval must be obtained prior to any transfer of funds appropriated to one department to another.

In addition, we find Council must adopt an ordinance in order to transfer funds. In a prior opinion, we determined an amendment to an ordinance relating to appropriations must be made by ordinance. Op. S.C. Atty. Gen., July 14, 1978. But, we determined a public hearing is not required to amend the ordinance. Id. Furthermore, in another opinion, we specifically considered whether a county council is required to hold a public hearing to transfer of county funds from one department to another and concluded a public hearing was not required. Op. S.C. Atty. Gen., July 30, 1976 ("[M]y opinion is that such a transfer does not require the holding of a public hearing before final council action is taken thereon so long as the transfer involves nothing more than that, i.e., the movement of already appropriated county funds from one line item in the budget to another."). Thus, based on prior opinions of this Office, we find council's approval of a transfer of funds must be in the form of an ordinance amending the ordinance approving the annual budget, but a public hearing is not required.

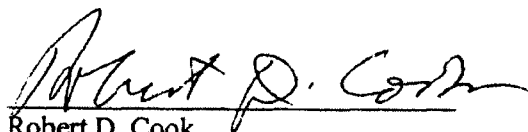
In conclusion, funds may be transferred in mid-budget year from the Register of Deeds Office to another department. However, Council must approve the transfer and do so by an ordinance. Accordingly, it is our opinion that the City Administrator acting alone may not effect such a transfer without the satisfaction of these requirements.

Very truly yours,



Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General