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POPE FLYNN  
GROUP

Legal Restraints on Municipal Councils

December 4, 2025

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Legal Restraints  
On a Municipality

1. Home Rule
2. Appropriation/Finance
3. Indemnity
4. Utility Services
5. Employment Contracts
6. Equal-Dignity Rule
7. FOIA

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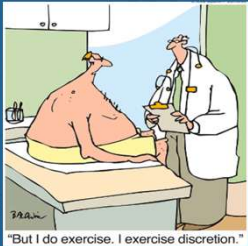
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LEGAL RESTRAINTS



"But I do exercise. I exercise discretion."

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## HOME RULE

Article VIII - Amendments to the Constitution (1973)

- Structure, organization, powers, duties and functions of government (Section 9)
- Uniform treatment of cities (Section 10)
- Sharing of services (Section 13)
- Local Government Act of 1975 (generally, Title 5, Chapter 7)

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## APPROPRIATION/FINANCE

Contracts in excess of tax or appropriation

- See S.C. Code § 11-1-40
- Unlawful for an authorized public officer to enter into a contract for a purpose in which the sum is in excess of the tax levied or the amount appropriated for that purpose.
- A "non-appropriation" clause allows an "out" for a public entity to deliberately fail to appropriate money for a payment obligation in a future fiscal year.

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## APPROPRIATION/FINANCE

*Luther v. Wheeler*, 73 S.C. 83, 52 S.E. 874, 876 (1905). There is a big difference between the powers of a municipal corporation and a private corporation. "The power to borrow money is not a necessary incident of municipal life, and hence does not exist unless expressly given...."

*S.C. Coastal Conservation League, Inc. v. Charleston Cnty.*, 442 S.C. 409, 417, 899 S.E.2d 609, 613 (Ct. App. 2024). The test that controls this court's inquiry of whether an action is legislative or business in nature is whether the contract in question "deprives a governing body, or its successor, of a discretion which public policy demands should be left unimpaired."

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**INDEMNITY**

- The AG "has consistently stated that the State agencies and political subdivisions of the State possess no authority to enter into indemnification agreements." 2016 WL 6781913, at \*2 (S.C.A.G. Nov. 7, 2016).
- The prohibition clearly applies to municipalities.
- In 2004, the AG opined that qualifying indemnity "to the extent permitted by law" cannot "be relied upon in an effort to validate an indemnification agreement." 2004 WL 2247469 (S.C.A.G. Sept. 29, 2004).
- In the modern context, in many critical contracts – for example, software licenses, payment processing services, bond purchase agreements, etc. – the counterparty simply will not negotiate the indemnity clause.

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**UTILITIES**

An Exercise in Discretion....

- *Green v. City of Rock Hill*, 149 S.C. 234, 147 S.E. 346, 360 (1929) - As a general rule, a municipality may not contract with one member of the public to discharge a purely public duty owed to the public generally.
- *G. Curtis Martin Inv. Tr. v. Clay*, 274 S.C. 608, 612, 266 S.E.2d 82, 84 (1980) - A municipal corporation or other corporate political entity created by state law, to which police power has been delegated, may not divest itself of such power by contract or otherwise.

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**UTILITIES**

- *W. Anderson Water Dist. v. City of Anderson*, 417 S.C. 496, 513, 790 S.E.2d 204, 213 (Ct. App. 2016) - District has not delegated its decision-making authority to a private person or entity, or even another public entity, but rather it has delegated the function of providing water and sewer service to the Michelin site to the City for a limited period of time. Distinction with *Clay* seems to be the lack of any exercise of discretion as to whether Anderson or West Anderson Water District would serve the Michelin site. In *Clay*, the private company had the power to say yes or no, which the Court found to be an over-delegation.

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## UTILITIES

- *City of Beaufort v. Beaufort-Jasper Cnty. Water & Sewer Auth.*, 325 S.C. 174, 178, 480 S.E.2d 728, 731 (1997) - The general rule is that, if the contract involves the exercise of the municipal corporation's business or proprietary powers, the contract may extend beyond the term of the contracting body and is binding on successor bodies if, at the time the contract was entered into, it was fair and reasonable and necessary or advantageous to the municipality. However, if the contract involves the legislative functions or governmental powers of the municipal corporation, the contract is not binding on successor boards or councils.

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## UTILITIES

South Carolina courts have struck as invalid many different kinds of contracts binding successor governing bodies.

- *Piedmont Pub. Serv. Dist. v. Cowart*, 319 S.C. 124, 459 S.E.2d 876 (Ct.App.1995) (employment contract of public officer).
- *Sammons v. City of Beaufort*, 225 S.C. 490, 83 S.E.2d 153 (1954) (invalidating covenant requiring town to maintain on-street parking facilities throughout life of certain municipal bonds, on ground that such a covenant deprives future boards of police power to adopt parking regulations necessary for the public safety and welfare).

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## EMPLOYMENT CONTRACTS

- *Sanders v. Belue*, 78 S.C. 171, 58 S.E. 762, 764 (1907) - First in this line of case law in S.C. The county board of commissioners are by law made responsible for the general supervision of the poorhouse and farm of the county, and it was never intended that the subordinate officer appointed by them for the superintendence of the institution should have a longer term than those by whom he was appointed.
- *State ex rel. Aker v. Major*, 94 S.C. 472, 78 S.E. 896, 896 (1913). The principles announced by this court in the case of *Sanders v. Belue*, 78 S. C. 171, 58 S. E. 762, are conclusive of every question involved in this case, and applied to the facts of this case, they show clearly that the plaintiff is entitled to the office.

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## EMPLOYMENT CONTRACTS

- *Newman v. McCullough*, 212 S.C. 17, 23, 46 S.E.2d 252, 255 (1948).
  - Thus, where the contract involved relates to governmental or legislative functions of the council, or involves a matter of discretion to be exercised by the council unless the statute conferring power to contract clearly authorizes the council to make a contract extending beyond its own term, no power of the council so to do exists, since the power conferred upon municipal councils to exercise legislative or governmental functions is conferred to be exercised as often as may be found needful or politic, and the council presently holding such powers is vested with no discretion to circumscribe or limit or diminish their efficiency, but must transmit them unimpaired to their successors.
  - As a general rule, the appointment and removal of public officers is a governmental function, and a municipal council cannot engage a public officer by contract for a term extending beyond that of its own members, so as to impair the right of their successors to remove such officer and to appoint another in his place.

13

## EMPLOYMENT CONTRACTS


- *Piedmont Pub. Serv. Dist. v. Cowart*, 319 S.C. 124, 132, 459 S.E.2d 876, 880 (Ct. App. 1995), aff'd, 324 S.C. 239, 478 S.E.2d 836 (1996). The District's discretion to employ the Administrator of the District and set the terms of his employment is discretionary power which public policy demands remain unimpaired. The twenty year employment contract requiring five years severance pay even if Cowart breaches the contract is an enormous impairment of the District's power and authority and therefore cannot be binding on successor boards.
- *Cunningham v. Anderson Cnty.*, 402 S.C. 434, 447, 741 S.E.2d 545, 552 (Ct. App. 2013), aff'd in part, rev'd in part, 414 S.C. 298, 778 S.E.2d 884 (2015). "The term of employment of the [county] administrator shall be at the pleasure of the council and he shall be entitled to such compensation for his services as the council may determine. The council may, in its discretion, employ the administrator for a definite term." In any event, we do not view the language of section 4-9-620 as clearly authorizing the "definite term" to extend beyond the terms of the outgoing council members. Therefore, it does not fall within Newman's exception to the prohibition against binding successor governing bodies.

14

## EQUAL DIGNITY RULE

- Any changes to an ordinance – amendment, moratorium, repeal – must be accompanied by the same "dignity" of procedure
- Amending an ordinance or adopting a moratorium that suspends any ordinance requires a new ordinance, with 2 readings
- If code of ordinances requires the Manager to live in the City limits, then contract should be approved by ordinance to repeal or exempt that requirement

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FOIA

- Must have an agenda
- No additions (absent exigencies)
- Timely publication/posting
- Grounds for collateral attack?

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Questions?

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