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Fiscal Aspects of Home Rule in South Carolina

by

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I would like to talk first of all about county government. If your county adopts one of the five forms of county government between now and July 1, 1976, then your county must take certain actions between now and then. If your county does not adopt a form prior to July 1 of 1976 but simply moves into one of the forms on July 1 of 1976, then the county will be required to take these same actions during the coming fiscal year or prior to July 1 of 1976. One of the first things that will have to be done is that the council must by ordinance prescribe the salary and compensation for its members. The law also provides that councilmen be reimbursed for actual expenses incurred in the conduct of their offices. After this initial determination of salary, the council can adjust the salary by ordinance in the future but such salary changes cannot be effective until the date of commencement of the next term of an elected council.

The law establishes the fiscal year for all counties to begin July 1 of each year and end the 30th day of June the following year. According to the law, the fiscal year will also be the budget year for counties.

The law requires annual fiscal reports, an interesting new requirement that will affect all aspects of county government. This requirement states: "all county offices, departments, boards, commissions, or institutions receiving funds shall make a full detailed annual fiscal report to the county council at the end of each fiscal year." Just what is meant by a full detailed annual fiscal report is not spelled out in the law. Since the full detailed annual report must be submitted to the County Council, it seems to me that the Council will be the agent to determine just what will be involved in that annual fiscal report. It would seem that the report might include such things as a brief discussion of the organization and the duties of the agencies, perhaps a brief outline of the activities of the past year for that agency with particular emphasis on new activities, it might include a brief discussion of the results of how well the agency succeeded in filling the

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purposes for which it was created. It might deal with the number of personnel that the agency employs and then the report might require certain financial information, information concerning expenditures for the agency and perhaps a percent of the total county budget that is expended in that area. Perhaps a breakdown of expenditures by activity might be useful. This report might deal with the revenue which the agency produces, and with the unit costs or the salaries of the personnel involved in it.

The law is also very specific about the budgets the council must adopt. The same paragraph of Section 1437-11 provides that county council should adopt annually and prior to the beginning of the fiscal year operating and capital budgets, and shall in such budgets identify the sources of anticipated revenue including taxes necessary to meet the financial requirements of the budgets adopted. Council shall further provide for the levy and collection of taxes necessary to meet all budget requirements except those provided for by other revenues.

The operating budget designates the financial and operating program for the county for a 12 month period, and is the council's method of controlling appropriations and expenditures.

The capital budget is something new for most counties. A current or operating expenditure is for an item or service which is used for a short period of time, whereas a capital budget is usually a five or six year work program and establishes long term goals. The capital budget is a program to meet public needs and a method of establishing a dependable order of urgency for each of these needs. The preparation and adoption of the capital budget provides greater assurance that the project will be undertaken in order of need and that overlapping projects and costly mistakes will be avoided.

This Section 1437-11 contains two other provisions, pertaining to county finance. First it empowers the council to make supplemental appropriations. It requires that the source of funds for the supplemental appropriation be identified and that the regular procedures for the adoption of a budget ordinance be followed in adopting the supplemental appropriation. Secondly this section provides that in the preparation of annual budgets or supplemental appropriations, council may require such reports, estimates and statistics from any county agency or department, as may be necessary to perform its duties as a responsible fiscal body of the county.

The stages to be followed in adopting a budget ordinance is spelled out in some detail in the law. Budget ordinances and other

ordinances affecting revenue must be read at three *public* meetings of the council, on three separate days. There must be an interval of not less than seven days between the second and third reading. The council is required to hold a public hearing before it can levy taxes. Not less than fifteen days notice of this public hearing must be given in the newspaper of general circulation in the county. A copy of budget ordinances must be available for public inspection at the office of the clerk of the council. With the requirements of the laws that the budget be given three readings and that a public hearing be held and that a notice of this public hearing be given at least fifteen days in advance of the public hearing, it would probably take a council some thirty days or so to adopt a budget ordinance. Realizing that thirty days is involved, we should also take note of the fact that the law says that the budget must be adopted prior to July 1st of each year or prior to the beginning of the fiscal year.

The law also requires independent audit. For the first time all counties are required to have an independent annual audit made of all financial records and transactions of the county and of any agency funded in whole or in part by the county fund. This audit must be made by a certified public accountant and the public accountant must be designated by the council not more than thirty days after the beginning of the fiscal year. The results of the audit must be made available for public inspection.

The law also requires all counties establish a centralized purchasing system. For the benefit of those counties that don't have such a system the Association of Counties is currently developing a model ordinance that will be available to assist those counties in establishing this system.

The law also provides some possible new sources of revenue for county government. For the first time counties are given the authority to grant franchises in areas outside of the corporate limits of municipalities where the county provides for the orderly control of services and utilities affected with the public interest. In granting franchises the county follows the laws by which municipalities grant franchises. Certain things are exempted from the franchise and these include persons, or businesses acting in the capacity of telephone, telegraph, gas and electric utilities or suppliers and utilities owned and operated by municipalities. The counties will be able to franchise such things as cable TV companies or garbage and trash collection, and some revenues should be generated by these franchises which should provide some additional funds for the operation of county government.

For the first time counties will be given the authority to adopt business license taxes upon persons and businesses engaged in, or in-

tending to engage in any business, occupation or profession in whole or in part within the county but outside the corporate limits of municipalities. The license tax must be graduated according to the gross income of the person or business to be taxed. If a person or business to be taxed pays a business license tax in a municipality or another county, then that portion of the gross income of the business or person which is paid in the other county or municipality must be deducted from the gross income of that business as far as the county municipal business license is concerned. Teachers and ministers of the gospel and rabbis are excluded from the business license tax as well as persons and visitors acting in the capacity of telephone, telegraph, gas and electric utilities, suppliers or any other utility regulated by the public service commission. South Carolina municipalities have for many years been involved in business licensing, and there are many court cases and many model ordinances and publications available to counties to help them in establishing their business license ordinances when they chose to do so.

Then there is another provision in the law that may offer some financial assistance to counties in the future. Counties are often required to house certain state agencies, to provide equipment and supplies, and in some instances perhaps personnel for state agencies who are enforcing or administering state-wide acts or programs. In the future when the General Assembly provides by general law for the use of county personnel, facilities, or equipment to implement the laws or rules and regulations promulgated pursuant to the law, the state agency or the department responsible for administering law must provide sufficient funds from its own appropriations to the county to implement these rules or regulations.

Paragraph 5 of section 1437-03 authorizes the governing bodies to assess property and levy ad valorem property taxes. It authorizes the governing body to tax different areas at different rates related to the nature and level of governmental services provided. It is sufficient to say that in the future the governing body for the county will have the authority to meet virtually any need that its citizens might require at the present time.

The next provision in the law may be of some interest to municipal people. There is a provision in the law which deals with double taxation. The section says that the governing body of a county shall not finance any service not being rendered by the county of March 7, 1973, by a county-wide tax where such service is being provided by a municipality within a municipality or where such service has been

budgeted by a municipality or where funds have been applied for by the municipality to provide the service. In other words, in the future a county cannot tax an area for a service if that area does not receive the service. Taxes can be levied in the entire unincorporated area of a county without regard to the requirements for petitions and referendums which are completely described if the service is available to all.

There are several sort of unrelated matters pertaining to the finance of county government. The law provides that any person who is an official or employee of the county and who has a substantial interest in any business which contracts with the county for the sale or lease of land, material, supplies or equipment or services or who personally engages in such matters, must make his interest known and then cannot participate in the deliberation concerning the item which is under consideration. Any officer or employee who willfully violates this law is guilty of malfeasance in office, and upon conviction forfeits the office for which he is elected or appointed.

For a couple of minutes I would like to address the municipal people. There are some half a dozen things or so that indicate substantial changes. The first of these is found in Section 4753, which provides the same requirement for an annual audit for municipal government that is required for county government. For the first time all municipalities are required to have an independent annual audit made of all financial records and transactions of the municipality, and of any agency funded in whole or in part by municipal funds. This audit must be made by a certified public accountant or a firm of such accountant, and as is the case of counties the municipality must designate the CPA or firm of CPA's within 30 days beginning of the fiscal year. This can be done without requiring competitive bids, and then the municipalities are also required to make the results of the audit report available for public inspection.

Secondly, municipalities are authorized to levy business license tax on gross incomes. Previously the business license tax had to be graduated according to the gross income of a person required to pay the license tax, or upon the amount of capital invested in the business. The new law eliminates a business license tax based upon capital invested in the business. Instead the license tax must be based on gross income, and also the law does not say anything about the business license tax being graduated according to gross income.

Thirdly, Section 4732 also authorizes the municipal governing body to fix fines and penalties for the violation of municipal ordinances and

regulation of the amount not exceeding \$200 or imprisonment not exceeding 30 days. Previously the law did not permit municipalities to fix fines and penalties in excess of \$100, so this has been doubled as far as the fines as can be imposed by municipalities concerned.

Fourthly, for the first time all municipalities are empowered to make assessment and establish uniform service charges. This may alter the financial structures of municipalities some in the future.

All municipalities are required to have an adopted budget. Municipalities are required to adopt only one budget for capital and operating expenses.