

**BEAUFORT COUNTY TRANSPORTATION COMMITTEE
MINUTES OF MEETING ON January 18, 2017**

The regular meeting of the Beaufort County Transportation Committee (BCTC) was held on January 18, 2017 in the Executive Conference Room of the Beaufort County Administrative Complex located at 100 Ribaut Road, Beaufort, South Carolina.

MEMBERS PRESENT: Mark McCain, Joe DeVito, James Morrall, Craig Forrest, Christopher England, Kraig Gordon, Paul Runko, Stephen Wilson

MEMBERS ABSENT: Bob Arundell, Steve Miller, Joseph Stroman

OTHERS PRESENT: Beaufort County Council Member Alice Howard
Wendell Mulligan, SCDOT Resident Maintenance Engineer
Rob McFee, Beaufort County Division Director for Construction, Engineering & Facilities

Notification. An audio recording of this meeting is available from the Beaufort County Engineering Department. Please contact the department at 843 255-2700 and request an audio copy. Power Point presentations given to the BCTC are available from the County Engineering Department.

1. **Call to Order & Members Roll Call.** Meeting was called to order at approximately 4:00 p.m. by Chairman Gordon and an attendance roll call was taken. A quorum was achieved for this meeting.
2. **Public Comment.** No public comment given.
3. **Approval of Minutes**

Motion: a motion was made and seconded to approve the minutes from the November 16, 2016 meeting. Motion passed unanimously.

4. Old Business

A. **Update on County Roadway Pavement Condition Survey.** Mr. McFee provided an update on the status of the County Road Pavement Condition Survey. The contract was awarded to F&ME Consultants by County Council at the January 9, 2017 meeting. Total contract value with F&ME Consultants is \$111,140 with a total project budget of \$122,540 with an added 10% contingency. Contracts have been sent to F&ME for signature. F&ME is working on preliminary establishment of dates to conduct the actual survey by the MAC vehicle. Estimated survey period would be for a month and should start by March 1, 2017. There are 3 tasks included in the contract.

1 – Provide a mobile assessment collection vehicle to conduct the data collection on approximately 250 miles of County maintained paved roads.

2 - Assist the County in developing a Pavement Management System to include pavement preservation maintenance techniques and associated timelines for maintenance and repair (M&R) based on the pavement distress information obtained in Task 1.

3 - Report completion which includes an Executive Summary; Project Methodology and Pavement Data; Street Segment OCI; Annual pavement maintenance program recommendation; budget deferral analysis and exhibits showing OCI and street segments length, lanes and pavement type.

A County road resurfacing contract resulting from the pavement survey could possibly be ready to advertise for bid by late spring. Total contract length with F&ME is 6 months to complete the 3 tasks.

B. **Report on SCDOT C Program Statewide Meeting.** Meeting was held in Columbia, SC on December 8, 2016. Chairman Gordon and Mr. McCain attended. Chairman Sommerville and Council Member Howard also attended. SC is 4th largest in the nation for by lane mileage with +40,000 miles. The state's 10 year plan was presented for spending over \$5 billion dollars. Interstate improvements were in the Spartanburg/Greenville area, I-20/I-26 around Columbia and out of Charleston for Boeing Plant and new Audi Plant. There are approximate 50 bridges included for repair. I-95 improvements/widening to 3-lanes were missing from the 10 year plan. Charleston County presented an analysis of their pavement repair/maintenance system. Chairman Gordon reviewed the Charleston County's presentation. A disk from the meeting is available which includes the Charleston County analysis. Also on the disk is an asphalt rejuvenation study.

C. **Report on SCDOT CTC Annual Review.** The County Engineering Department received a good annual review report for C Program audit conducted in December 2016.

D. **Status of SCDOT and BCTC Projects.** Mr. McFee reviewed BCTC projects. Engineering design for Contract 50 County dirt road paving is 60% completed. NOI permits have been submitted to OCRM for review. Contract 50 includes 7 dirt roads: Coker Lane, Butler Farm Road, Albertha Fields Circle, Shiny Road, Almond Drive, Mary Smalls Road and Devonwood Drive. Contract 50 will be the last traditional dirt road paving contract to be advertised for bid. From this point forward per the BCTC's Transportation Plan, the BCTC will receive petitions from property owners requesting for dirt road improvements/paving. Property owners will be responsible for providing the necessary right of way documents.

Per Mr. Mulligan, the remaining Federal Aid road resurfacing is being completed. The last segments remaining are US 21 from Hunting Island to the Harbor River Bridge and on Ribaut Road/US 21 from Lenora Drive to the Battery Creek Relief Bridge and then from the Battery Creek Bridge to Dowlingwood Drive in Shell Point. SCDOT is looking at non-federal aid preservation projects to select. Also, SCDOT has pavement marking projects at various locations throughout the County getting ready to start. The storm drain failure repair at Boundary Street and Marsh Road where the steel plates are located just before the signal at the County Admin Building has been advertised for bid.

E. **Report on SC Attorney General's November 2016 Decision.** Chairman Gordon provided the BCTC with a copy of the SC Attorney General decision concerning responsibility for maintenance of roadways within a municipality's jurisdiction. The November 2016 decision is Attachment #1. The opinion reached is that the municipality is responsible for the maintenance and repair of roads inside its corporate limits. The CTC's funding requirements remain the same in that the CTC can provide funding to SCDOT, County and municipality maintained roadways if it wishes to. It is up to the County to organize Memorandums of Agreement if necessary for County roadways located in the municipalities.

D. **LATS/MPO Meeting.** Chairman Gordon reported on LATS/MPO progress and discussion from the January meeting. LCOG members run the MPO. Issues that the MPO must work on are the widening of US 17 as it approaches GA, the Jasper terminal infrastructure and connectivity to I-95 and the widening of I-95 to 3 lanes. As reported earlier there is no planning for I-95 improvements in the next 10 years. Another topic of discussion is the US 278 corridor improvements from Moss Creek to Squire Pope Road. Funding has been made available for the replacement of the Mackey Bridge. \$200 million dollars is the estimate for all the bridge widening in the corridor. SCDOT is asking the County to fund 80% of the estimated \$200 million. The environmental study will cost \$3.0 million. SCDOT would provide \$1.0 million. The LATS/MPO endorsed spending \$2.0 million for the environmental study for the US 278 Corridor/Bridge improvements as long as the County reaches an agreement with the state to be accountable for reimbursement of the \$2.0 million if the project does not move forward after the environmental study.

5. New Business

A. **Election of Officers.** Per the Transportation Plan, new committee officers are to be elected at the beginning of the year.

Motion: A motion was made by Mr. DeVito and seconded by Mr. Forrest to nominate Mr. Gordon as BCTC Chairman. The motion to appoint Mr. Craig Gordon as BCTC Chairman passed unanimously.

Motion: A motion was made by Mr. DeVito and seconded by Mr. Runko to nominate Mr. McCain as BCTC Vice Chairman. The motion to appoint Mr. Mark McCain as BCTC Vice Chairman passed unanimously.

Motion: A motion was made by Mr. McCain and seconded by Mr. Runko to nominate Mr. DeVito as BCTC Treasurer. The motion to appoint Mr. Joe DeVito as BCTC Treasurer passes unanimously.

B. Treasurer's Report – 2nd Qtr FY 2017 Financial Statement. The Treasurer's Report was presented for the period ending December 31, 2016.

C. Monthly Nonrecurring Project Report. The BCTC 2016 SCDOT Road Resurfacing continues to move forward. Substantial completion is still scheduled for June 2017. Total budget for the 2016 resurfacing is \$6,159,857 which is funded from the 2016 nonrecurring C Fund deposit (\$5,667,823) and the BCTC's 2016 25% mandated expenditure for SCDOT roads totaling \$581,774. Per Mr. McFee, the County has received \$1,296,700 in a one-time nonrecurring C fund deposit for FY 2017. The 2017 nonrecurring funds are programmed for focusing on resurfacing improvements for US and SC routes. The available C funds for the 2017 SCDOT resurfacing are estimated at \$1.9 million which is a combination of nonrecurring and recurring C funds. Mr. McFee is working on road recommendations for the 2017 Nonrecurring Funds resurfacing.

D. Workshop Date. February 28, 2017 was selected as the date to hold the BCTC Workshop. Workshop will start at 2:00 PM in the Community Room at the BJWSA.

6. Public Comment. No public comment given.

7. Meeting Adjourned. The March 15, 2017 meeting will be held at 4:00 p.m., in the Executive Conference Room, County Administration Building, Robert Smalls Complex, Beaufort, SC.



ALAN WILSON
ATTORNEY GENERAL

November 15, 2016

G. Lee Cole, Jr., Esq.
Town of Williamston Attorney
PO Box 315
Williamston, SC 29697

Dear Mr. Cole:

Our Office has received your opinion request regarding whether a county may require a municipality to be responsible for maintenance and repair of county roads located inside the corporate limits of a municipality. Specifically, you state the following:

[a] South Carolina municipality has, within its corporate limits, state maintained roads, roads that have been historically maintained by the county, and very few roads that have been built and maintained by the municipality. The municipality has never formally nor informally accepted the responsibility to repair or maintain any roads that have been historically maintained by the county, and the municipality considers these roads to be county roads. The municipality's position is that the maintenance and repair of said roads are the county's responsibility pursuant to S.C. Code Ann. Sec. 57-17-10, *et seq.* The county's position is that the repair and maintenance of said roads are the municipality's responsibility pursuant to S.C. Code Ann. Sec. 5-27-120.

Our understanding of your question is that the roads that you refer to as "county roads" were built and until recently, maintained by the county. The Town of Williamston has never repaired these "county roads." We will answer your question accordingly.

LAW/ANALYSIS:

We will begin our analysis by reviewing the language of sections 5-27-120 and 57-17-10 of the South Carolina Code and other related statutes. Section 5-27-120 addresses the repair of streets in municipalities which have a population of greater than 1,000¹ and it states:

[t]he city or town council of any city or town of over one thousand inhabitants shall keep in good repair all the streets, ways and bridges within the limits of the city or town and for such purpose it is invested

¹ According to its website, the Town of Williamston has a population of 3992. See <http://www.williamstonsc.us/about/>

with all the powers, rights and privileges within the limits of such city or town that are given to the governing bodies of the several counties of this State as to the public roads.

S.C. Code Ann. § 5-27-120 (1976 Code, as amended).

Section 5-27-10 is pertinent because it grants municipal councils the power to establish and improve roads. It states:

[w]henever the mayor and aldermen of any city or the intendant and wardens of any town in this State shall think it expedient to widen, open, lay out, extend or establish any street, alley, road, court or lane, they may purchase the lot, lots or parts of lots of land necessary for such street, alley, road, court or lane, and the fee simple of such land shall be vested in such city or town for the use of the public from the day of delivery of the deed of sale.

S.C. Code Ann. § 5-27-10 (1976 Code, as amended).

Section 57-17-10 grants county councils control over public roads, which includes the repair of the roads. It provides:

[a]ll roads, highways and ferries that have been laid out or appointed by virtue of an act of the General Assembly, an order of court or an order of the governing body of any county are declared to be public roads and ferries, and the county supervisor and the governing body of the county shall have the control and supervision thereof. The county supervisor and governing body of the county may order the laying out and repairing of public roads where necessary, designate where bridges, ferries or fords shall be made, discontinue such roads, bridges and ferries as shall be found useless and alter roads so as to make them more useful.

S.C. Code Ann. § 57-17-10 (1976 Code, as amended).

Additionally, county councils are required by statute to repair the roads in the county. Section 57-17-10 states:

[t]he governing body of each county shall take charge of and superintend the repair of the highways in the county. The bridges shall be repaired under its supervision, and the expense thereof shall be paid out of the money in the county treasury raised and appropriated for this purpose.

S.C. Code Ann. § 57-17-70 (1976 Code, as amended).

The language of section 5-27-120 is plain and clear that municipal councils in municipalities having a population greater than 1000 shall repair the streets within the municipal limits.² The court in Vaughan v.

² In a prior opinion, we discussed some principles of statutory construction:

Town of Lyman, 370 S.C. 436, 635 S.E.2d 631 (2006), agrees with this conclusion, stating that "section 5-27-120 "clearly defines the duty to the general public of a municipality to maintain its streets." The issue appears to be whether county councils can also be responsible for repairing roads which are located within the limits of a municipality.

In a February 25, 1988 opinion, our Office discussed how "it is settled law that counties and municipal corporations have only such powers as are granted to them by legislative enactment." Op. S.C. Atty. Gen., February 25, 1988 (1988 WL 383501) (quoting Williams, et al. v. Wylie, et al., 217 S.C. 247, 60 S.E.2d 586 (1950); 56 Am.Jur.2d, Municipal Corporations, etc., Section 193)). The South Carolina Constitution requires the Legislature to equip counties with certain powers, duties, and functions and it provides:

[t]he General Assembly shall provide by general law for the structure, organization, powers, duties, functions, and the responsibilities of counties, including the power to tax different areas at different rates of taxation related to the nature and level of governmental services provided.

S.C. Const. art. VIII, § 7.

In response to the State Constitution, the Legislature enacted section 4-9-30, which grants county councils certain powers, including the right to "make appropriations for functions and operations of the county, including, but not limited to, appropriations for general public works, including roads. . . ." S.C. Code Ann. § 4-9-30(5)(a)(1976 Code, as amended).

Similarly, the State Constitution requires the Legislature to provide municipalities with powers, duties, and functions. S.C. Const. art. VIII, § 9 states that "[t]he structure and organization, powers, duties,

"[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 581 (2000). "[Courts] will give words their plain and ordinary meaning, and will not resort to a subtle or forced construction that would limit or expand the statute's operation." Harris v. Anderson County Sheriff's Office, 381 S.C. 357, 362, 673 S.E.2d 423, 425 (2009). "If a statute's language is plain, unambiguous, and conveys a clear meaning, then the rules of statutory interpretation are not needed and a court has no right to impose another meaning." Strickland v. Strickland, 375 S.C. 76, 85, 650 S.E.2d 465, 472 (2007). "[S]tatutes must be read as a whole, and sections which are part of the same general statutory scheme must be construed together and each one given effect, if reasonable." State v. Thomas, 372 S.C. 466, 468, 642 S.E.2d 724, 725 (2007). "[C]ourts will reject a statutory interpretation that would lead to an absurd result not intended by the legislature or that would defeat plain legislative intention." State v. Johnson, 396 S.C. 182, 189, 720 S.E.2d 516, 520 (Ct.App. 2011).

Op. S.C. Atty. Gen., September 18, 2013 (2013 WL 5494616).

functions, and responsibilities of the municipalities shall be established by general law. . . ." The Legislature granted powers to municipalities through section 5-7-30, which provides:

[e]ach municipality of the State, in addition to the powers conferred to its specific form of government, may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of powers in relation to roads, streets. . . .

S.C. Code Ann. § 5-7-30 (1976 Code, as amended).

In our 1988 opinion, we discussed how sections 4-9-30³ and 5-7-30 granted police power to both counties and municipalities (although a municipality can only exercise its police power within the territory of the municipality). See Op. S.C. Atty. Gen., February 25, 1988, supra. Specifically discussing section 5-7-30, we determined that county councils can not exercise their police power within the territorial limits of municipalities without the consent of the municipal councils. Our explanation was that:

[t]his express grant of police power to municipalities, coupled with the apparent lack of any express grant of power to counties to regulate matters within municipalities, militates against any notion that a county, without first obtaining the agreement or permission of a municipality situated within geographic boundaries of the county, may extend its police power to reach matters occurring within the territorial limits of the municipality.

Id.

We further explained in our opinion that:

[t]his Office has, on several occasions, expressed its belief that a county's exercise of police power is restricted to the unincorporated areas of the county. In an opinion dated October 2, 1984, the 'intent of the General Assembly to recognize the autonomy of a municipality within its borders and likewise recognizes the autonomy of the county within the unincorporated areas of the county' was discussed. Likewise, in an opinion dated May 21, 1987, we concluded that a Richland County anti-smoking ordinance would be of no effect for facilities of the Richland County Recreation Commission located within a municipality of the county.

Our beliefs are in accordance with the general law on this issue. Counties and cities are viewed as co-equal political subdivisions which are independent of each other politically, geographically, and governmentally. City of Richmond v. Board of Supervisors of Henrico County, 199 Va. 679, 101 S.E.2d 641 (1958); Murray v. City of Roanoke, 194 Va. 321, 64 S.E.2d 804 (1951).

³ Section 4-9-30 was referred to in the opinion as section 4-9-10, et seq., Act 283, and the Home Rule Act.

Id.

Furthermore, case law shows that, as a result of sections 5-27-120 and 5-27-10 (and their prior versions), municipal councils are in control of the roads located within their municipal limits and they have the power to regulate and manage such roads. Our State Supreme Court explained in Leonard v. Talbert, 222 S.C. 79, 83-84, 71 S.E.2d 603, 604-05 (1952) that:

[o]rdinarily, county authorities have no power to control streets within municipalities, except where the statute so provides. Martin v. Saye, 147 S.C. 433, 145 S.E. 186. In this State, as in most States, there are statutes vesting such control in the corporate authorities of cities and incorporated towns. The usual effect of such statutes is to transfer from the county authorities to the municipality the power to regulate and control highways located therein. Chapman v. Greenville Chamber of Commerce, 127 S.C. 173, 120 S.E. 584, 587.⁴

Our State Supreme Court opined in Whitlock v. Town of Jonesville, 111 S.C. 391, 98 S.E. 142, 142 (1919), that section 2951 of the Code of 1912 (now section 5-27-120) "gives city councils the same rights in the management of its streets as are given to county boards of commissioners." The court examined section 1932 of the Code of 1912 (now section 5-27-10), which gave "to the county boards of commissioners the right 'to discontinue such roads, bridges and ferries as shall be found useless, and to alter roads so as to make them more useful'" and found that a town council had the same right to alter a road as a county council did under then section 1932.

After reviewing the law, our opinion is that the municipality, and not the county, is responsible for the maintenance and repair of the roads located inside its corporate limits. The Legislature granted municipal councils police power over roads and streets located within the municipal limits. As previously stated, section 5-27-120 requires the municipal councils of municipalities of a certain size to repair the streets within their municipal limits⁵. Section 5-27-120 also grants municipal councils the same control and

⁴ When reaching its conclusion, the court in Chapman v. Greenville Chamber of Commerce, *supra* considered section 2951 of the Code of 1912, which was a prior version of section 5-27-120, and which stated that the municipal council was vested "with all the powers, rights and privileges within the limits of said city that are now given, or that may hereafter be given to the county board of commissioners of the several counties of this state as to the public roads." The court also considered section 2926 of the Code of 1912, which was a prior version of section 5-27-10, and which stated that "the said city council shall have, and is hereby given, the further authority to lay out and open new streets in said city, and to close up, widen, or to otherwise alter those now in use, or those which may hereafter be established, whenever, in their judgment, the same may be necessary for the improvement or convenience of said city."

⁵ As section 5-27-120 specifically directs municipal councils to "repair all the streets, ways and bridges within the limits of the city or town," we believe it is irrelevant if the municipal streets were laid out or appointed by General Assembly act, court order, or county council order, as provided for in section 5-27-10. See Op. S.C. Atty. Gen., July 11, 2008 (2008 WL 3198122) (quoting Capco of Summerville, Inc. v. J.H. Gayle Constr. Co. Inc., 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006)) ("[w]here there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect"); Op. S.C. Atty. Gen., March 20, 2006 (2006 WL 981695) (quoting Criterion Insurance Company v. Hoffman, 258 S.C. 282, 188 S.E.2d 459 (1972); Op. Atty. Gen. dated August 5, 1986)) ("[i]t is a rule of statutory construction that general and specific

supervision over the city streets as the county councils have over the public roads, and the same rights to lay out, repair, discontinue, and alter the city streets under section 57-17-10.

We believe that county councils are only responsible for repairing roads which are in unincorporated areas of the county. Section 57-17-10 expressly states that county councils are responsible for repairing highways in the county. The Legislature did not grant county councils the ability to exercise any power within the territory of a municipality without the permission of the municipal council. And as we stated in our February 25, 1988 opinion, "[a]s a governmental entity of the state, a county possesses only such powers as are expressly or impliedly conferred upon it by constitutional provisions or legislative enactments; and powers not conferred are just as plainly prohibited as though expressly forbidden." 20 C.J.S. Counties, Section 49, pp. 802-803. Op. S.C. Atty. Gen., February 25, 1988, supra.

Our conclusion is supported by other provisions of law which recognize the autonomy of municipalities. In our prior opinion, we opined that in section 4-9-40, "the legislature, itself, seems to have, at least, implicitly recognized a limitation on the authority of counties to act within the boundaries of municipal corporations." See Op. S.C. Atty. Gen., February 25, 1988, supra. Section 4-9-40 grants the county the ability to contract for services within municipalities. It states:

[a]ny county may perform any of its functions, furnish any of its services within the corporate limits of any municipality, situated within the county, by contract with any individual, corporation or municipal governing body, subject always to the general law and the Constitution of this State regarding such matters. *Provided*, however, that where such service is being provided by the municipality or has been budgeted or funds have been applied for that such service may not be rendered without the permission of the municipal governing body.

S.C. Code Ann. § 4-9-40 (1976 Code, as amended).

As shown above, a function of the county is roads. See S.C. Code Ann. § 4-9-30(5)(a), supra. Therefore, a county council would have to contract with a municipal council in order to repair roads within the municipal limits.

Furthermore, the State Constitution allows political subdivisions to jointly administer functions and exercise powers. Article VIII, section 13 of the S.C. Constitution provides:

(A) Any county, incorporated municipality, or other political subdivision may agree with the State or with any other political subdivision for the joint administration of any function and exercise of powers and the sharing of the costs thereof.

(B) Nothing in this Constitution may be construed to prohibit the State or any of its counties, incorporated municipalities, or other political

statutes should be harmonized if possible. However to the extent of any conflict between the two, the special [sic] statute usually prevails").

subdivisions from agreeing to share the lawful cost, responsibility, and administration of functions with any one or more governments, whether within or without this State. . . .

S.C. Const. art. VIII, § 13.

In our 1988 opinion, we concluded, regarding Article VIII, section 13, that:

[c]learly, by these provisions, counties and municipal corporations may agree to jointly administer services or exercise powers. By reasonable implication, a county could not exercise power within an incorporated municipality unless such an agreement existed or, in effect, the municipality has assented to the county's exercise of power.

Op. S.C. Atty. Gen., February 25, 1988, supra.

CONCLUSION

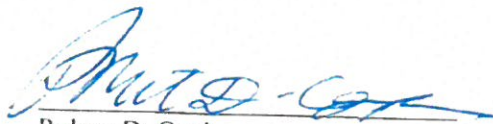
Our opinion is that the municipality, and not the county, is responsible for the maintenance and repair of the roads located inside its corporate limits. We believe that county councils are only responsible for repairing roads which are in unincorporated areas of the county. As section 5-27-120 clearly and specifically directs municipal councils to "repair all the streets, ways and bridges within the limits of the city or town," we believe it is irrelevant what political subdivision built or traditionally maintained the streets.

Sincerely,



Elinor V. Lister
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General