

In compliance with the Freedom of Information Act, agendas for the following meeting were mailed to all members of Council, County Attorney Richard Ness, Lower Savannah COG, *The Bamberg Leader*, *The Times and Democrat*, SouthernCarolina Regional Alliance, Bamberg County Library, Bamberg County Website, Bamberg County Courthouse Annex and a copy posted on the bulletin board in the main hallway of the County Courthouse.

In light of the COVID-19 pandemic, Bamberg County Council met 6:00 p.m., June 23, 2021 in several locations within the Bamberg County Courthouse Annex and some participated by way of teleconference. The public joined the meeting by various means of technology. **Present:** Chairman Larry Haynes, Councilwoman Sharon Hammond, Councilmen Evert Comer, Jr., Spencer Donaldson, Phil Myers, Jr., Clint Carter and Dr. Jonathan Goodman, II. **Others Present:** Joey R. Preston, T.M. Thomas, Richard Ness, Adam Ness, Alice Johnson, Gina Smith, Chip Maier, Dionne Gleaton, Mark Tyler, Dianne Black, Summer Johnson, Sue Greenburg, Kay Maxwell, Farrell Pulaski, Jannie Johnson, Sarah G. Noel, Walt Inabinet, Bill Johnson, Ruthie Brown, Michael Chassereau and four additional callers.

Bamberg County Council Virtual meeting was called to order by Chairman Larry Haynes at 6:00 p.m. Invocation was rendered by Councilwoman Sharon Hammond, followed with the pledge of allegiance led by Councilman Clint Carter.

On motion by Councilman Comer, seconded by Councilman Comer, council approved the agenda as submitted.

-Order of Business-

Chairman Haynes read the following for council's consideration: An ordinance to adopt the operating and capital budgets of Bamberg County for the fiscal year beginning July 1, 2021 and ending June 30, 2022, and to make appropriations for such Bamberg County Budgets for county ordinary purposes for which the county may levy a tax; to provide for the levy of taxes on all taxable personal and real estate properties in Bamberg County of such county ordinary purposes, including sufficient tax to pay the principal and interest on outstanding indebtedness of Bamberg County maturing during said fiscal year; and to provide for other matters relating to Bamberg County and Bamberg County budgetary matters. Council – second reading. Council still had questions regarding the new proposed budget for FY 2021-2022, to include a list of all positions that are funded in the county, along with filled and unfilled positions. Administrator Preston explained that the county is always going to have vacancies. Mr. Preston read letters from the county's bond attorney, Ray Jones of the law firm of Parker Poe of Columbia, attorney Tom Martin of Burr & Forman LLP and County Attorney Richard Ness (*letters to be attached to minutes*). Also, Administrator Preston provided copies of letters to the council from the mayors of Bamberg, Denmark and Govan, admonishing them to pass the budget because it would affect the operating status of the towns/cities in Bamberg County. Not passing a budget, all monies would stop. No health insurance could be paid, salaried employees – no paycheck, no sheriff's department, no ambulance contract. The continuation of a resolution with last year's budget was suggested. Administrator Preston informed them that would not work because of the obligations that we already have in place that have to be funded for next year that have been in place for this year. After an extended dialogue, Chairman Haynes called for a motion and the vote. On motion by Councilman Comer, seconded by Councilman Goodman, council passed second reading of the Bamberg County FY 2021-2022 budget. Those voting in favor: Councilmen Myers, Goodman, Comer and Haynes. Voting not in favor: Councilmen Donaldson, Carter and Councilwoman Hammond.

On motion by Councilman Carter, seconded by Councilwoman Hammond, council agreed to adjourn at 7:22 p.m., and reconvene Wednesday, June 30, 2021 for third reading of the budget.

Respectfully submitted,


Rose R. Shepherd, CCC

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From: Jones, Ray E. <rayjones@parkerpoe.com>

Date: Tue, Jun 22, 2021 at 9:08 AM

Subject: Failure to Pass a Budget/Default on Payments: Risks to the County

To: joey preston <joeypreston@gmail.com>, Gina R. Humphreys (Smith) <smithgr@bambergcounty.sc.gov>

Cc: Jones, Ray E. <rayjones@parkerpoe.com>

Joey,

I am following up on our conversation wherein we discussed the potential effects on the County of the failure to pass a budget and, potentially, default on County payment obligations.

Here are our thoughts as Bond Counsel:

1. The County has spent the past 7 years cleaning up its finances. It now has good audits and has been able to secure a bond rating, which reduces the costs of every borrowing the County pursues.
2. A payment default on any County obligation has the potential to completely reverse all of the financial progress the County has made over the past 7 years.
3. A payment default would cause the County to lose its bond rating. This means that every future borrowing of the County would be more expensive because of higher interest rates.
4. A payment default would also assure the County of future difficulty in finding banks to bid on its debt. It would become a distressed borrower and, as a result, would likely be forced to deal with lenders that impose much higher interest rates than the County is currently enjoying.

In short, a payment default would be catastrophic.

Please let us know if you need anything else from us on this issue.

Thank you,

Ray Jones

Ray Jones
Partner

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Attachment - Letter 2

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From: **Martin, Tom** <TLMartin@burr.com>

Date: Tue, Jun 22, 2021 at 4:35 PM

Subject: Potential Effects of Not Having a Balanced Budget in Place by 6/30/2021 (i.e., of not adopting a county budget ordinance for FY 22)

To: joey preston <joeypreston@gmail.com>, Joey R. Preston <prestonjr@bambergcounty.sc.gov>

Cc: Gina Smith <ginasmithcpa@gmail.com>, Gina R. Smith <smithgr@bambergcounty.sc.gov>

Mr. Preston: You have recently asked me to list the possible effects and impacts on Bamberg County, including County Council, for not adopting a balanced budget ordinance and thereby not having a balanced budget in effect on 7/1/2021 for FY22. You asked me to exclude the impacts on County debt, credit, debt issuance and credit ratings, as those are addressed by other means.

I assume that your request is either rhetorical or educational in nature, as opposed to being used for actual decision making, because the actual, potential impacts of intentionally failing to adopt a balanced budget by 7/1/2021 are almost too dreadful to even contemplate.

First, and foremost, the law of South Carolina requires the adoption by county government of a balanced budget by 6/30 for the following fiscal year, and that law makes it the responsibility of county council to adopt that ordinance. Here is the entirety of 4-9-140, so that you can see that I am not playing word games or tricks by leaving out part - this is the law, and it uses the word "shall" which is mandatory:

SECTION 4-9-140. Designation of fiscal and budget years; annual reports; adoption of budgets; levying and collection of taxes; supplemental appropriations; obtaining reports, estimates, and statistics.

The fiscal year of the county government shall begin on the first day of July of each year and shall end on the thirtieth day of June next following, and the fiscal year shall constitute the budget year of the county government. All county offices, departments, boards, commissions or institutions receiving county funds shall make a full, detailed annual fiscal report to the county council at the end of the fiscal year.

County council shall adopt annually and prior to the beginning of the fiscal year 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. Council shall further provide for the levy and collection of taxes necessary to meet all budget requirements except as provided for by other revenue sources.

Council may 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.

For the purposes of this section a supplemental appropriation shall be defined 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. 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.

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 the responsible fiscal body of the county.

HISTORY: 1962 Code Section 14-3711; 1975 (59) 692; 1977 Act No. 56.

That is the LAW of the State of South Carolina: If, as a public official, you intentionally violate the law of the state there are consequences. The first is that a court can order you to obey the law, through something called a *writ of mandamus*, which can be directed at county officials. Failure to obey the writ can result in contempt of court proceedings including punishment in the form of fines and imprisonment. IF someone should successfully bring an action for a writ of mandamus, the county could also be ordered to pay the legal expenses of the other party.

Has there ever been a situation in which a county did not adopt a balanced budget by 6/30? Of course - in fact, it happens almost every year. But in all such instances of which I am aware, none of the counties intentionally violated the law, and certainly did not state that they were going to do so - they were simply unable to come up with a balanced budget for some reason other than mere intent - and in most cases tried to ameliorate the damage through such devices as a **continuing resolution**, trying to keep last year's budget in effect on an ongoing basis. South Carolina law does not reflect a continuing resolution or authorize it - that is a federal device, authorized for the Congress of the United States, but not authorized by the State Constitution for the counties of South Carolina. But at least in those cases, the County Council LOOKS like they were trying. If you just refuse to adopt a budget which exists, it is hard to argue good faith to a court enforcing the law. SO, someone brought before the courts of South Carolina and charged with failure to obey 4-9-140 not only would have to defend violation of the law, but could not even claim mitigating circumstances.

In addition to simply violating the law, with intent (which can be shown by remarks made at the time, indicating an intent not to obey), and with no attempt to comply with the law or to mitigate damages, failure to adopt a budget also leads to some practical dilemmas for county personnel, for vendors to the county (think: local businesses), for county employees needing their pay, and for everyone doing business with the county. If the County has any hope of avoiding these Draconian results of intentional failure to adopt a budget, it would only be because that result is so uncommon that a body of law has not developed around it. Here are just a few of the very real potential impacts of failing to have a budget ordinance in effect:

1) County funds are not supposed to be spent except and until when appropriated by County Council, and the budget ordinance is the document which appropriates funds. Without Council appropriating money, County departments should not be able to obtain fuel for patrol cars and road maintenance equipment, the Treasurer should not issue County checks for such purchases, and the County procurement office should not make any purchases.

2) without an adopted budget appropriating funds for payment of invoices, payment of debt service on bonds, or payment of any other county debt, officials charged with making such payments cannot lawfully do so, resulting in potential default on County debt, and the impact of such default is mind-boggling;

3) without an appropriation of funds to pay county employees, such employees should not be paid by the county, from members of county council to elected officials to the hardworking folks who keep potholes patched, who run fire departments and ambulances, who manage elections, who open and close the courthouse. No one wants that, but that SHOULD be the legal effect of not having appropriated funds in personnel accounts to make payroll.

Think of it this way, if there is no budget in place, authorizing the appropriation and expenditure of funds, NO county function which requires money should continue to be carried out - and there is no other substitute device or procedure authorized by the Constitution and statutes of the State to make such appropriations. What is supposed to happen, at the point when all funds already appropriated for a particular function of the County are exhausted, that function is supposed to end, right then. If someone continues to spend money for that function, they COULD be held individually responsible for such funds, including having to repay them to the county.

There is a way in which local government is supposed to operate, and it all starts, at the local level, with county council, which has certain functions directed by state law to occur. When those functions are preceded by the word 'shall', they are not discretionary - council cannot decide whether or not to obey them, or obey some and not others. Council is directed to perform those functions, and if they do not, then the system shuts down, and County Council is responsible, for not having done its job.

I hope that that makes sense and helps you and your Council fully understand its duties, and the consequences of not doing its duties - and the potential impact on Council for failing to do its required duties.

If I may assist further, on this or anything else, please let me know!!! R/TLM

Thomas Martin • *Counsel*

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