

OFFICE OF THE
ATTORNEY GENERAL

DON SIEGELMAN
ATTORNEY GENERAL
MONTGOMERY, ALABAMA 36130
(205) 261-7400

(205) 242-7300



STATE OF ALABAMA

APR 24 1990

90-00237

Honorable Joe M. Ford
Member, Alabama House of Representatives
District No. 28
Gadsden State Jr. College
George Wallace Drive
Gadsden, Alabama 35901

Municipalities - Mayors -
Municipal Funds - Budgets

Gadsden City Council may amend by ordinance an appropriation in the old budget.

Council has no authority to remove, alter or limit the power of mayor in § 11-43B-10.

Council may decrease an appropriation by ordinance amending the budget and should abolish an office pursuant to statutory procedures.

Dear Representative Ford:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION 1

Alabama state law says in Section 10 of Act No. 85-926 (the Act which established the mayor-council form of government in Gadsden) that the old budget will be used if a new budget is not passed by the first day of the new fiscal year. Can a city ordinance (0-93-89), effective after the end of the fiscal year, amend the old budget as it refers to encumbered balances (i.e., a salary appropriation)?

FACTS AND ANALYSIS

Section 10 of Act No. 85-926 is codified at Code of Alabama 1975, § 11-43B-10, which states:

"The mayor shall annually prepare and submit a proposed budget to the council. After public hearing the council shall adopt an ordinance providing the municipal budget. Adoption of the budget shall constitute appropriation of the amounts specified therein from the funds indicated. If the council fails to adopt a budget for the ensuing fiscal year by the first day of the fiscal year, the amounts appropriated for the preceding year shall be deemed to be appropriated for the ensuing year on a month-to-month basis until such time as the council adopts a budget. Every general fund appropriation shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered, except that an appropriation for a capital expenditure shall not lapse until the purpose for which it was made is accomplished or abandoned or until three years pass without any disbursement from or encumbrance of the appropriation. Any appropriation may be decreased or increased by ordinance amending the budget. Part or all of an unencumbered balance may be transferred by the mayor within an appropriation. No expenditure may be made unless the finance director or other designee of the mayor first certifies that there is a sufficient unencumbered balance in the appropriate allotment or appropriation. If the mayor shall disapprove of the budget adopted by the council, within 10 days of the time of its passage by the council he shall return the same to the clerk with written objections and the clerk shall bring this to the next meeting of the council. A majority vote of the total membership of the council shall be necessary to override any veto of the budget by the mayor." (Emphasis added.)

Honorable Joe M. Ford
Page 3

This section provides that if the council fails to adopt a budget by the first day of the new fiscal year, the appropriations from the preceding year shall be used on a month-to-month basis until the council adopts a budget. It also states that "any appropriation may be decreased or increased by ordinance amending the budget." Accordingly, it is our opinion that an appropriation in the old budget, as carried forward, may be amended by ordinance.

CONCLUSION

The City Council of Gadsden may amend by ordinance an appropriation in the old budget which it is currently using.

QUESTION 2

Alabama state law says in Section 10 of Act No. 85-926 that the mayor has the authority to transfer funds within an appropriation. Can a city ordinance (0-93-89, Sec. 2, Sec. 3) remove, alter, or limit this power specifically granted to the mayor by the state of Alabama?

FACTS AND ANALYSIS

This office has stated numerous times that a municipality may only exercise the authority granted to it by statute. The provisions of Code of Alabama 1975, § 11-43B-1, et seq., allow the City of Gadsden to adopt a mayor-council form of government as set forth in Chapter 43B. Section 11-43B-10 specifically authorizes the mayor to transfer unencumbered funds within an appropriation. The council is given no authority to remove, alter, or limit this power of the mayor.

CONCLUSION

The City Council of Gadsden has no authority to remove, alter, or limit the power of the mayor to transfer unencumbered funds within an appropriation as set forth in § 11-43B-10.

QUESTION 3

Alabama state law says in Section 7 of Act No. 85-926 that, "Neither the council nor any of its members shall direct or request the mayor or any employee of the city to appoint or remove any person from office or position, or in any manner take part in the appointment or removal of employees in the service of the city."

Can the Gadsden City Council, after failing to legally abolish a position or otherwise legally cause the layoff or termination of an employee, force an employee to resign by amending the budget to remove his salary from the budget?

FACTS AND ANALYSIS

This office stated in an earlier opinion to you dated February 16, 1990, that:

"The council has the authority under Code of Alabama 1975, § 11-43B-17 to establish offices or positions and prescribe the functions thereof. The council also has the authority to adopt a budget and amend the budget by ordinance. Code of Alabama 1975, § 11-43B-10. However, the council has no authority to appoint or remove employees from established positions. Code of Alabama 1975, § 11-43B-7. If the council chooses to abolish a position, it may do so pursuant to § 11-43B-17, but the council should follow any applicable personnel policies and procedures. Special attention should be given to §§ 11-43B-19, 20, 21 and 22 which relate to the rights of officers and employees. Opinion to Honorable Bobby M. Junkins, Representative, under date of March 26, 1987."

Although the council may by ordinance amend its properly adopted budget by decreasing an appropriation, it is our opinion that if the council chooses to abolish an office or

Honorable Joe M. Ford
Page 5

position it should do so pursuant to the proper procedures such as §§ 11-43B-17, -19, -20, -21 and -22.

CONCLUSION

The City Council of Gadsden may decrease an appropriation by an ordinance amending the budget and should abolish an office pursuant to the relevant statutory procedures.

I hope this sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN
Attorney General

By:



BRENDA FLOWERS
Assistant Attorney General

DS/BF/dn
0485N