

## **GEORGIA ATTORNEY GENERAL'S OFFICIAL OPINION 99-3**

The Mayor and some Council Members have been spending money in violation of the City Charter and Ordinances without passing Amendments or Resolutions in accordance with the City's Purchasing Ordinance because they believe that if it is in the Adopted Budget there is no reason to follow established laws. Georgia Attorney General totally disagrees and in his written Official Opinion states why.



THURBERT E. BAKER  
ATTORNEY GENERAL

Department of Law  
State of Georgia

40 CAPITOL SQUARE SW  
ATLANTA, GA 30334-1300

# Official Opinion 99-3

FEBRUARY 24, 1999

To: State Auditor  
Department of Audits and Accounts

Re: The requirement that amendments to the budgets of local governments be adopted by ordinance or resolution is not satisfied by the adoption of a "blanket amendment" in the local government's budget resolution.

This is in response to your request for an opinion regarding whether the requirement in O.C.G.A. § 36-81-3(d) that amendments to local government budgets be adopted by ordinance or resolution can be satisfied by a "blanket amendment" in the local government's budget resolution.

Article I of Chapter 81 of Title 36 of the Official Code of Georgia Annotated (Michie) governs local government budgets and audits and O.C.G.A. § 36-81-3 addresses amendments to local government budgets. That Code Section was amended in 1998 to add to subsection (d)(1) the sentence "[s]uch amendment shall be adopted by ordinance or resolution," and to add new subsection (3). Official Code of Georgia Annotated § 36-81-3(d) now provides as follows:

(d) Nothing contained in this Code section shall preclude a local government from amending its budget so as to adapt to changing governmental needs during the budget period. Amendments shall be made as follows, unless otherwise provided by charter or local law:

(1) Any increase in appropriation at the legal level of control of the local government, whether accomplished through a change in anticipated revenues in any fund or through a transfer of appropriations among departments, shall require the approval of the governing authority. Such amendment shall be adopted by ordinance or resolution;

(2) Transfers of appropriations within any fund below the local government's legal level of control shall require only the approval of the budget officer; and

(3) The governing authority of a local government may amend the legal level of control to establish a more detailed level of budgetary control at any time during the budget period. Said amendment shall be adopted by ordinance or resolution.

O.C.G.A. § 36-81-3(d).

It is a fundamental rule of law that "construction of statutes requires determination of the legislative intent, keeping in mind the old law, the evil, and the remedy. O.C.G.A. § 1-3-1(a)." 1995 Op. Att'y Gen. 95-42, p. 114. "[A]ll words, except words of art, shall be given their ordinary significance. OCGA § 1-3-1(b)." *City of Roswell v. City of Atlanta*, 261 Ga. 657 (1991). The legislative intent with respect to this Article is specifically set forth in the Code at O.C.G.A. § 36-81-1.

The intent of this article is to provide minimum budget, accounting, and auditing requirements for local governments so as to provide local taxpayers with an opportunity to gain information concerning the purposes for which local revenues are proposed to be spent and are actually spent and to assist local governments in generally improving local financial management practices while maintaining, preserving, and encouraging the principle of home rule over local matters. It is the further intent of this article to provide a mechanism through which appropriate information may be collected to assist state and local policy makers in carrying out

their lawful responsibilities. It is also the intent of this article to provide for the collection and reporting of information so as to assist local taxpayers and local policy makers in understanding and evaluating local government service delivery and operations.

The adoption of a local government's budget requires certain formalities. The budget must be made available for public inspection, O.C.G.A. § 36-81-5(d), notice of the budget's availability for inspection must be published in the newspaper, O.C.G.A. § 36-81-5(e), and the governing authority must conduct a public hearing upon notice, O.C.G.A. § 36-81-5(f) and (g). The requirement that amendments be adopted by ordinance or resolution promotes accountability, disclosure and public knowledge of budget changes. In contrast, permitting a "blanket amendment" in the initial budget resolution violates the clear language of the statute and has the potential of undermining the budgetary process because changes to the budget are permitted without any notice or other formalities.

Thus, it is my official opinion that the requirement that amendments to the budgets of local governments be adopted by ordinance or resolution is not satisfied by the adoption of a "blanket amendment" in the local government's budget resolution. The law requires that any amendments "shall be adopted by ordinance or resolution."

Prepared by:

SHEREEN M. WALLS

Assistant Attorney General