



ALAN WILSON  
ATTORNEY GENERAL

January 13, 2012

The Honorable Al Pridgen  
Mayor, Town of Pinewood  
P.O. Box 236  
16 Clark Street  
Pinewood, South Carolina 29125\*

Dear Mayor Pridgen:

You have requested an opinion of this Office concerning the legal status of a person who “performs the administrative duties” of the Town of Pinewood, such as collecting fees, paying bills, keeping the town checkbook, and other similar “duties required for the operation of the town.” You indicate the person currently performing these duties in the Town of Pinewood typically is referred to as the “town clerk.” In addition, we are informed that you, in your capacity as the mayor, did not hire or appoint the person performing these duties.<sup>1</sup>

#### Law/Analysis

Section 5-7-160 of the South Carolina Code (2004) provides that “[a]ll powers of [a] municipality are vested in the council, except as otherwise provided by law . . .” (Emphasis added). We are informed that the Town of Pinewood employs a mayor-council form of government pursuant to title 5, chapter 9 of the South Carolina Code, commonly referred to as the “strong mayor” form. Accordingly, the mayor is “the chief administrative officer” of the town, charged with the powers and duties set forth in section 5-9-30 of the South Carolina Code (2004) and with such other duties as might be “placed in his charge by or under Chapters 1 through 17” of title 5. *Id.* He is also a member of the municipal council and entitled to “vote as other councilmen.” *Id.* §§ 5-9-20(a), 5-9-30(3).

Among the mayor’s enumerated powers and duties are the following:

- (2) to direct and supervise the administration of all departments, offices and agencies of the municipality except as otherwise provided by Chapters 1 through 17;

---

\* At your request, this correspondence has been transmitted to you by facsimile, not mailed to the official address indicated.

<sup>1</sup> We have not examined any town ordinances or other documents concerning this person’s appointment or employment.

....

- (5) to prepare and submit the annual budget and capital program to the council;
- (6) to submit to the council and make available to the public a complete report on the finances and administrative activities of the municipality as of the end of each fiscal year; and
- (7) to make such other reports as the council may require concerning the operations of municipal departments, offices and agencies subject to his direction and supervision.

*Id.* § 5-9-30.

Section 5-7-220 of the South Carolina Code (2004) provides for the position of a “municipal clerk,” as follows:

The council under the council and mayor-council forms of government . . . shall appoint an officer of the municipality who shall have the title of municipal clerk. The municipal clerk shall give notice of council meetings to its members and the public, keep the minutes of its proceedings and perform such other duties as are assigned by council.

While council may assign additional duties to the municipal clerk, we have opined that council may not do so in a manner that infringes upon the duties assigned by law to the mayor:

In my opinion . . . the council is authorized to prescribe clerical duties for the municipal clerk which are directly related to the council’s activities . . . . This provision does not authorize the council to prescribe duties which relate primarily to the daily functioning and operation of the municipality, i.e., to those activities which are specifically vested in the mayor as its chief administrative officer . . . or in those employees and officers who are under his supervision and subject to his control.

Letter to B. Monroe Hiers, Op. S.C. Att’y Gen. (Oct. 12, 1979) (emphasis added). We adhere to this view, which accords with the general principle that a governing body may authorize others to exercise only those powers that it lawfully could exercise itself. *Cf. Williams v. Wylie*, 217 S.C. 247, 254, 60 S.E.2d 586, 588 (1950) (in which the order of the circuit court judge was adopted as the judgment of the Supreme Court and stated: “As State auxiliaries [counties] cannot dispose of public property unless with the formal sanction of the State and even then in those cases only in which the State, violating no trust and no contract and infringing the rights of no one could herself legally act”); 62 C.J.S. Municipal Corporations § 568 (“Departmental powers conferred by statute cannot be overridden by local ordinance, taken away or limited by the municipal council or governing body, or overridden by an officer acting beyond his or her authority. . . . Powers conferred by city charter on the mayor alone, with respect to certain city boards, cannot be exercised by the city council or shared with the mayor.”).

If the town treats the person you have described as the municipal clerk appointed pursuant to section 5-7-220, we would caution that a court might find some of his or her duties exceed the permissible scope of that position. For example, we have opined previously that municipal council “may very well not be authorized to assign non-clerical duties such as the disbursement of public funds” to the municipal clerk appointed pursuant to section 5-7-220. Letter to B. Monroe Hiers, Op. S.C. Att’y Gen. (Dec. 17, 1979). In addition, section 5-9-30(6)—quoted above—could be read to imply that the mayor has charge of the day-to-day financial records of the town. *See also* S.C. Code Ann. § 30-1-20 (2007) (making the “chief administrative officer of any agency or subdivision or any public body in charge of public records . . . the legal custodian of [those] records”).<sup>2</sup>

Another theory regarding the nature of the position you have described may be drawn from section 5-9-40 of the South Carolina Code (2004), which provides in relevant part: “The mayor and council may employ an administrator to assist the mayor in his office.”<sup>3</sup> This administrator’s sole statutory duty is to assist the mayor in the completion of the mayor’s duties. Thus, municipalities have significant flexibility concerning the precise duties to be performed by this person. *See also* Letter to John D. Smith, Op. S.C. Att’y Gen. (Oct. 13, 1992) (“No statute of which we are aware establishes qualifications to be met or duties to be exercised by such an administrator.”). Nevertheless, this administrator must assist the mayor.

To assist means “[t]o help or support, esp[ecially] as a subordinate or supplement; aid.” *The American Heritage Dictionary* 83 (3d College ed. 1997). Accordingly, if the town treats the person you have described as the administrator employed by the mayor and council pursuant to section 5-9-40, this administrator must not act in any manner that hinders the mayor in the completion of his statutory duties. Moreover, as a subordinate to the mayor and council, this person would have no authority to exercise discretion regarding the mayor’s access to town documents or information.<sup>4</sup>

---

<sup>2</sup> If the person you describe is the municipal clerk appointed pursuant to 5-7-220 and presently performs duties beyond the proper scope of that position, we would recommend council consider separating those improper duties into a distinct position. The person serving in this new position would be subject to the mayor’s authority pursuant to section 5-9-30(1)-(2).

<sup>3</sup> Because the mayor is a member of council, the phrase “mayor and council” leaves ambiguity with respect to the precise measure of authority to be exercised by the mayor in selecting an administrator to assist him. We have suggested on previous occasions that legislative or judicial clarification would be helpful in this regard. Letter to Lee W. Zimmerman, Op. S.C. Att’y Gen. (March 3, 2008); Letter to Lake City City Council, Op. S.C. Att’y Gen. (Apr. 27, 2006). This ambiguity with respect to how the administrator should be hired does not affect our analysis of the administrator’s duties, as set forth above.

<sup>4</sup> We note that neither a municipal clerk appointed pursuant to 5-7-220 nor an administrator hired pursuant to 5-9-40 may implement town policy in a manner that infringes upon the mayor’s ability to perform his statutory duties, including his duties as a member of town council. *See, e.g.*, Letter to Robert L. Williams, Op. S.C. Att’y Gen. (Sept. 23, 1997) (town clerk could not, at behest of mayor, deprive other members of town council of access to the minutes of meetings or to copies of town contracts because “[a] member of the governing body of an entity needs access to the records of such entity to be able to do the job he or she was elected to do”); Letter to The Honorable W.B. Bookhart, Jr., Op. S.C. Att’y Gen.

Conclusion

The person you describe might be a municipal clerk appointed pursuant to section 5-7-220. A municipal clerk may not be assigned duties that infringe upon the statutory powers or duties of the mayor. A court might find that a municipal clerk exercising the duties you have described is infringing upon the powers or duties of the mayor.

In the alternative, the person you describe might be an administrator employed by the mayor and council pursuant to section 5-9-40. Such administrator must “assist”—not hinder—the mayor in the completion of the mayor’s statutory duties.

Very truly yours,



Dana E. Hofferber  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General

---

(May 12, 1980) (city council could not prohibit the mayor from accessing the city’s post office box because “such a prohibition would interfere with an[d] infringe upon [the mayor’s] duties, powers and responsibilities as the ‘chief administrative officer’ . . . responsible for [the town’s] day-to-day functioning and for the supervision of its departments and offices”); cf. Letter to Patricia Welborn, Op. S.C Att’y Gen. (March 24, 1995).