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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

March 30, 1998

P. Todd Cooper
Member, Travelers Rest City Council
34 Cox Street
Travelers Rest, South Carolina 29690

RE: Informal Opinion

Dear Mr. Cooper:

Your opinion request has been forwarded to me for reply. You have informed this Office that a question has arisen regarding whether the city administrator possesses the authority to suspend or dismiss the city's fire or police chief. You have asked whether state law and/or the Travelers Rest city code grants the city administrator this power.

You have informed this Office that Travelers Rest operates under the council form of government. Council's authority under this form of government is found in Section 5-11-10 et seq. of the South Carolina Code of Laws. Section 5-11-30 of the Code provides in pertinent part:

All legislative and administrative powers of the municipality and the determination of all matters of policy shall be vested in the municipal council.

In addition, Section 5-11-40 of the Code provides in pertinent part as follows:

(a) The council may establish municipal departments, offices or agencies in addition to those created by Chapters 1 through 17 and may prescribe the functions of all departments, offices and agencies. The council may hire an administrator to assist the council. (emphasis added).

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(b) All departments, offices and agencies may be administered by an officer appointed by and subject to the direction and supervision of council.

As you can see, state law merely provides that council may hire an administrator to assist council. It does not set forth the powers and duties of the administrator. Therefore, determination of such duties is left to the discretion of council. Op. Atty. Gen. dated October 18, 1988.

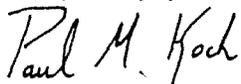
City council has set forth the duties and powers of the city administrator in the Municipal Code. The Municipal Code provides that city council shall appoint a city administrator and fix the administrator's salary. Travelers Rest Municipal Code, § 1.16.080. The administrator serves at the pleasure of the city council for an indefinite term. Id. The Municipal Code also spells out the duties of the city administrator. Travelers Rest Municipal Code, § 1.16.100. Included in the duties of the city administrator is the power and authority to suspend and dismiss department heads, except the fire chief and chief of police. Travelers Rest Municipal Code, § 1.16.100(4).

Based on the foregoing, the powers of the city administrator under the council form of government are determined by council and the city administrator operates pursuant to council's direction. The city administrator's powers and duties are not derived from state law but from council's determination. In the situation raised in your request, the Travelers Rest City Council has laid out the powers and duties of the city administrator in the Municipal Code. In doing so, the city council did not grant the city administrator with the power to suspend and dismiss the fire chief or chief of police. Thus, the city administrator does not possess this power. By excluding the power to suspend and dismiss the fire chief and chief of police from the powers of the city administrator, such is left in the hands of council. Nothing in the state law would change this determination.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch

Assistant Attorney General