



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

September 23, 1997

Robert L. Williams, Police Chief
Town of Santee
Post Office Box 757
Santee, South Carolina 29142

Re: Informal Opinion

Dear Chief Williams:

Your recent opinion request has been forwarded to me for reply. You have asked a number of questions regarding the Mayor, Town Council and Town Attorney of the Town of Santee. Due to the time deadline placed in your opinion request, I have attempted to answer your questions as succinctly as possible. In addition, I have enclosed prior opinions of this Office which will provide you with additional information. I note that some of your questions involve factual determinations and this Office does not have the authority to make such in a legal opinion. Others involve ethical determinations which are more appropriately addressed to the State Ethics Commission.

QUESTION 1

You have asked whether the Mayor can use his office to receive legal advice from the Town Attorney regarding the Mayor's own wrongdoing in office.

This question appears to be an ethical question. Therefore, I would recommend that you contact Mr. Gary Baker at the State Ethics Commission.

QUESTION 2

You have asked whether the Town Council has the power to override the Mayor and order the Water Clerk to turn off all delinquent water customers.

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From the information provided, I am unable to make a determination as to the powers granted to the Town Council and the Mayor regarding the operations of the Town's Water Department. Therefore, I am not in a position to answer this question. I would recommend consulting with the Town Attorney to determine the powers of each in this regard.

QUESTION 3

You have asked whether the Mayor can prohibit members of Town Council from speaking with the Town Attorney.

Other than those few sections of the Code which impose duties on the Town Attorney, the Town Attorney would be required only to perform the duties of his office in a manner prescribed by town ordinance. S.C. Code Ann. § 5-7-230; Op. Atty. Gen. dated September 15, 1977. As a general rule, the duties of a town attorney require him to act as attorney, counsel, and legal advisor of every agency of the city, and the heads of the departments. Id. However, his duties may be narrowed by ordinance, or rules or orders properly promulgated by the municipal authorities. Id.

In order to properly determine the Town Attorney's actual duties, the ordinance defining those duties needs to be analyzed. Since I do not have that ordinance, I am unable to make this determination.

QUESTION 4

You have asked what steps should be taken by Town Council to take the Mayor to court to stop him from abusing his powers in office.

This is a question that would be more appropriately addressed to the Town Attorney. Therefore, I would recommend that the Town Council seek advice from that individual.

QUESTION 5

You have asked whether is legal for the Town Attorney to use his letter head to draw an agreement between the town and a private person and have the Mayor sign this agreement against the Town Council's objection.

This question involves a factual determination which this Office does not have the authority to make in a legal opinion.

QUESTION 6

You have asked a question regarding the proper procedures to be followed at a Town Council meeting.

This is a question of parliamentary procedure, the determination of which is basically within the purview of the legislative body.

QUESTION 7

You have asked what procedures should be followed in electing a mayor pro tempore.

Pursuant to Section 5-7-190 of the South Carolina Code of Laws, "[I]mmediately after any general election for the municipal council, the council shall elect from its membership a mayor pro tempore for a term of not more than two years."

QUESTION 8

You have asked whether the Mayor can stop other members of Town Council from getting minutes of the meetings and copies of contracts by threatening to fine the Town Clerk if she approves anyone getting a copies without his permission.

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. Ops. Atty. Gen. dated March 24, 1995 and December 2, 1977. Therefore, it is improper for the Mayor to attempt to block Town Council members from accessing these records.

In addition, the minutes of all proceedings of all public bodies and all votes at such proceedings, with the exception of all such minutes and votes taken at meetings closed to the public pursuant to S.C. Code Ann. § 30-4-70, and information in or taken from a contract dealing with the receipt of public funds or expenditure of public or other funds by public bodies are public information under the Freedom of Information Act. S.C. Code Ann. § 30-4-10 et. seq. Thus, pursuant to S.C. Code Ann. § 30-4-110, if the Town Clerk willfully violates the provisions of the Freedom of Information Act, the Town Clerk would be subject to the penalties provided therein. Therefore, it would be improper for the Mayor to coerce the Town Clerk into breaking the law.

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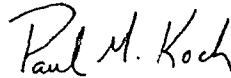
You have asked what steps should be taken by Town Council to have the Governor remove a Town Council member from office for ethical violations and pending court charges for Driving Under Suspension.

The power of the Governor to remove a member of a town council is found in Article VI, § 8 of the South Carolina Constitution. This Section reads in pertinent part "[A]ny officer of the State or its political subdivisions ... who has been indicted by a grand jury for a crime involving moral turpitude or who has waived such indictment if permitted by law may be suspended by the Governor until he shall have been acquitted." Since Driving Under Suspension is not a crime of moral turpitude, the Governor would not have the power to suspend the Council member for such crime. Any alleged ethical violation should be addressed to the State Ethics Commission.

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