



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

July 8, 1998

Ronald W. McKinney, Esquire
Greenville City Attorney
Post Office Box 2207
Greenville, South Carolina 29602

RE: Informal Opinion

Dear Mr. McKinney:

Your opinion request has been forwarded to me for reply. You have informed this Office that the City of Greenville operates under the council-manager form of government. However, the City also has a civil service commission which hires, promotes and terminates employees in the police and fire departments. You have asked whether the section of the South Carolina Code of Laws which authorizes civil service commissions (Section 5-9-110 et seq.) was repealed by the passage of the Home Rule Act. (Act No. 283 of 1975, codified in Title 5 of the Code).

This Office has previously addressed questions similar to the one raised in your opinion request. In an opinion dated January 9, 1976, this Office was asked whether the City of Anderson could establish a civil service commission relating to the police department only. The Honorable Karen LeCraft Henderson (then an Assistant Attorney General, now a federal judge on the United States Court of Appeals for the District of Columbia) reviewed the relevant statutes and found if a municipality established a civil service commission, such must apply to both the police and fire departments. Of particular importance to your question was the conclusion reached therein that Section 47-721 et seq. of the 1962 Code (recodified as 5-19-110 et seq.) "**will remain effective even after the implementation of Act No. 283 of 1975, the 'home rule' legislation.**" (emphasis added). This conclusion was based on the fact that the Home Rule legislation specifically repealed several sections of the Code of Laws, none of which were the sections which authorized civil service commissions. In particular, Part II, Section 5 of

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the Act which states: "the 1962 Code is amended by striking Articles 1, 3, 4 and 5 of Chapter 1, Chapters 2 through 7 and Chapter 14, all of Title 47"

Judge Henderson also addressed civil service commissions, post Home Rule, in opinions dated February 2, 1978 and April 13, 1982. In the 1978 opinion, this Office was asked whether or not the Mayor of Batesburg was authorized to dismiss a member of the Batesburg volunteer fire department. Judge Henderson concluded that the Mayor was so authorized pursuant to Section 5-9-30(1) of the Code. However, her opinion was based on the assumption that Batesburg had not established a civil service commission pursuant to the provisions of Sections 5-19-110 et seq. of the Code.

In the 1982 opinion, addressed to Greenville City Attorney Stephen A. Kern, this Office was asked several questions concerning municipal civil service commissions. Judge Henderson advised as follows:

1. In a municipality with a civil service commission, that commission, not the municipal council, is to dismiss a fire chief or a police chief pursuant to Sections 5-19-110 et seq. of the Code. The municipal 'home rule' legislation itself recognizes that a municipal council does not automatically hire and fire all municipal employees and appointive administrative officers. See, §§ 5-9-30(1) and 5-13-90(1), CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended ('except as otherwise provide [sic] by law'); cf., § 5-19-290. CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended.

2. I agree with your conclusion that Section 5-19-110 et seq. of the Code are permissive rather than mandatory because the use of the word 'may.' Accordingly, a municipality which creates a civil service commission by ordinance can abolish it by ordinance. Wright v. Florence, 229 S.C. 419, 93 S.E.2d 214 (1956). It cannot, however, vary from the provisions of Sections 5-19-110 et seq. if it decides to retain a civil service commission.

As you can see, on several occasions after the passage of the Home Rule Act, Judge Henderson addressed the continuing validity of civil service commissions created under Sections 5-19-110 et seq. In fact, Judge Henderson specifically stated that the aforementioned sections "will remain effective even after the implementation of Act No. 283 of 1975, the 'home rule' legislation." It is the policy of this Office not to supersede or invalidate a prior opinion unless it is clearly erroneous or unless the applicable law has changed. The law in which these prior opinions were based has changed only slightly

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over the years. See Act No. 619 of 1978 (changing the minimum population requirements of S.C. Code Ann. § 5-19-110). Our review of the statute and these prior opinions does not compel the conclusion that the interpretations reached therein are clearly erroneous. Therefore, we must adhere to the conclusions reached in these prior opinions.

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