

1976 WL 30632 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 30, 1976

*1 Henry Summerall, Jr., Esquire
Attorney at Law
P. O. Box 2376
Aiken, South Carolina 29801

Dear Mr. Summerall:

You have requested an opinion from this office as to whether or not the Aiken City Council can lawfully employ as City Prosecutor an attorney whose law partner is a member of the Council. Having read the facts as outlined in your letter, I agree with your conclusion that the councilman involved has complied with the provisions of Section 12.04 of the Aiken City Charter relating to a councilman's disclosure of interests and abstention from voting on a matter before the City Council in which that councilman has a financial interest and the Council's independent finding that such matter is in the best interest of the City.

As to the pertinent South Carolina Code provisions, Act No. 191 of 1975 [59 STAT. Act No. 191 at 217 (1975)] encompasses the ethics legislation applicable to all public officials and employees in South Carolina, including municipal officials and employees. Section 17 thereof reads in part:

Any public official or public employee who, in the discharge of his official duties, would be required to take action or make a decision which in his opinion would substantially affect directly his personal financial interest or those of a member of his household, or a business with which he is associated, shall instead take the following actions:

(a) Prepare a written statement describing the matter requiring action or decisions, and the nature of his potential conflict of interest with respect to such action or decision;

(c) If he is not a legislator, he shall furnish a copy to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take such steps as the State Ethics Commission shall prescribe through rules or regulations to remove himself from influence over actions and decisions on the matter on which the potential conflict exists.

With reference to subsection (c) of Section 17, the councilman is to be guided by the rules and regulations of the State Ethics Commission inasmuch as he has no 'immediate supervisor.' The Ethics Commission has not yet begun functioning so that there are no further requirements for him to comply with other than the preparation and submission of the statement called for by subsection (a) of Section 17.

Moreover, Section 12.04 of the Aiken City Charter complies substantially with the conflict of interest provision of the municipal section of Act No. 283 of 1975, the 'home rule' legislation, which, when effective, will require that:

Any municipal officer or employee who has a substantial financial interest in any business which contracts with the municipality for sale or lease of land, materials, supplies, equipment or services or who personally engages in such matters shall make known

that interest and refrain from voting upon or otherwise participating in his capacity as a city officer or employee in matters related thereto.

*2 The opinion of this office is, therefore, that the Aiken City Council can lawfully employ as City Prosecutor an attorney whose law partner is a member of the Council where that councilman has disclosed to the Council in writing the nature of his interest and has refrained from voting on the question of his law partner's employment.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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