



ALAN WILSON
ATTORNEY GENERAL

November 16, 2021

The Council Members
Town of Latta
107 NW Railroad Avenue
Latta, South Carolina 29565

Dear Council Members:

We received your letter requesting an opinion of this Office concerning the enforceability of a Town of Latta ordinance setting forth qualifications for the mayor and council members. The ordinance provides:

Section 2-46 Mayor and councilmember- Qualifications

The mayor and councilmembers of the town shall be qualified electors of the state, and of the county in which the town is situated, and shall have resided within the corporate limits of the town for at least six months immediately preceding the day of elections.

In regard to this ordinance, you ask: "The council would like to know if it is enforceable as written and we would like to be clear that it is not in conflict with any state laws."

Law/Analysis

As always, a municipal ordinance is a legislative enactment and therefore, presumptively valid unless and until a court declares it invalid. Op. S.C. Att'y Gen., 2021 WL 3703908 (S.C.A.G. Aug. 3, 2021) (citing U.S. Fid. & Guar. Co. v. City of Newberry, 257 S.C. 433, 438, 186 S.E.2d 239, 241 (1972)). Therefore, we begin with the presumption that the ordinance cited above is valid unless a court declares it invalid. In section 5-7-30 of the South Carolina Code (Supp. 2020), the Legislature gave municipalities broad authority to enact ordinances "not inconsistent with the Constitution and general law of the State." Furthermore, section 5-7-10 of the South Carolina Code (2004) and section 17 of article VIII of the South Carolina Constitution (2009) instruct us to liberally construe such authority. See S.C. Code Ann. § 5-7-10 ("The powers of a municipality shall be liberally construed in favor of the municipality and the specific mention of particular powers shall not be construed as limiting in any manner the general powers of such municipalities."); S.C. Const. art. VIII, § 17 ("The provisions of this Constitution and all laws concerning local government shall be liberally construed in their favor. Powers, duties, and responsibilities granted local government subdivisions by this Constitution and by law shall

include those fairly implied and not prohibited by this Constitution.”). As our Supreme Court explained in Denene, Inc. v. City of Charleston, 352 S.C. 208, 211, 574 S.E.2d 196, 198 (2002), determining whether a local ordinance is valid is a two-step process.

The Court first considers whether the municipality had the power to enact the ordinance. If the State has preempted a particular area of legislation, a municipality is without power to regulate the field. If the municipality had the power to enact the ordinance, the Court then determines whether the ordinance is consistent with the Constitution and general law of the State.

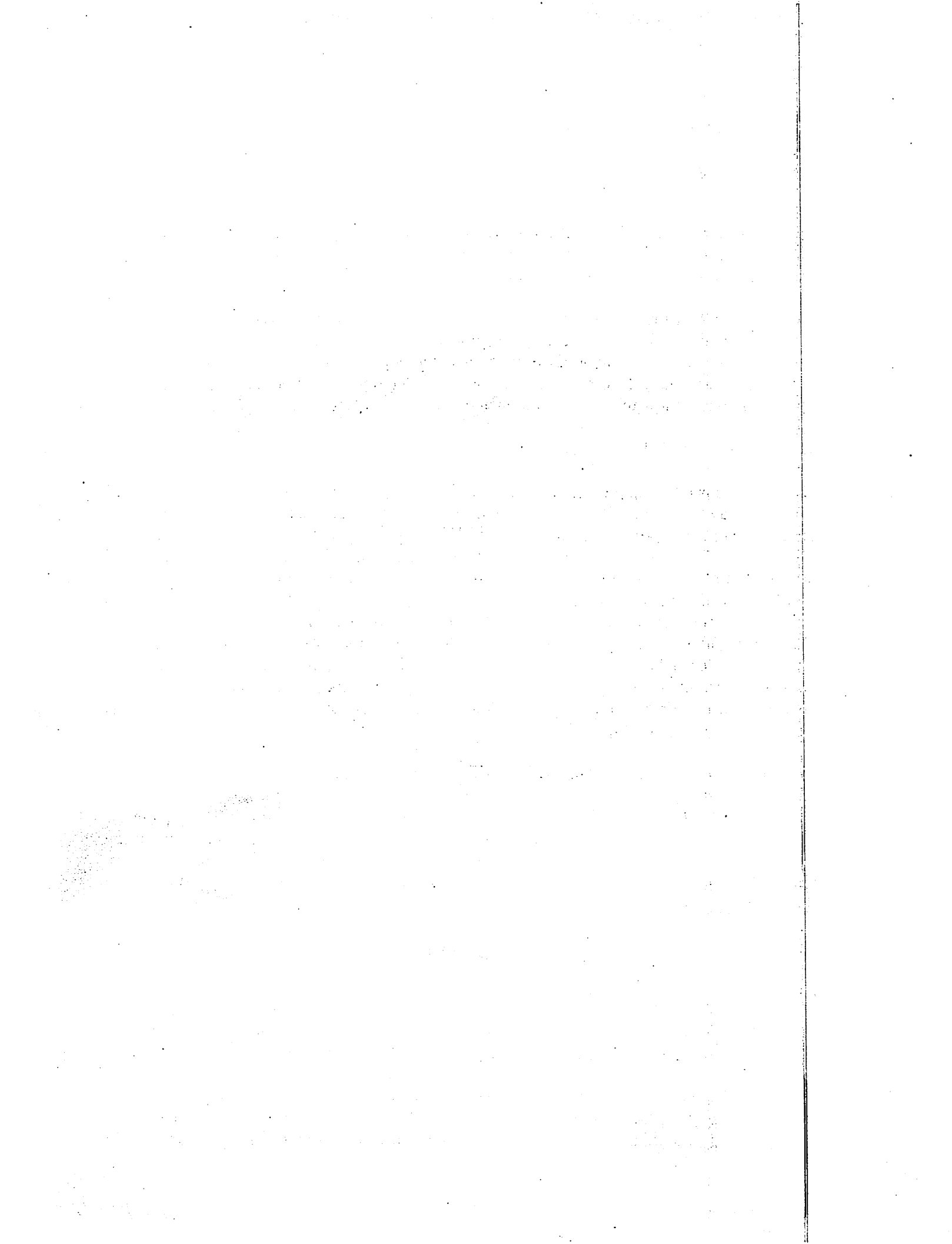
Id. at 212, 574 S.E.2d at 198 (citations omitted).

In 2019, using this two-step process, we considered whether a similar North Charleston ordinance requiring its mayor and council members to be residents at least six months prior to the day of the election was valid. Op. Att’y Gen., 2019 WL 4894130 (S.C.A.G. Sept. 17, 2019). In that opinion, we did not find any express or implied authority allowing a municipality to impose a durational residency requirement. Id. Furthermore, we referenced section 5-15-20 of the South Carolina Code (2004), which pertains to the election of mayor and city council members, and requires “[m]ayors and councilmen shall be qualified electors of the municipality” Id. Citing section 5 of article II of the South Carolina Constitution (2009), electors must reside in the municipality for thirty days prior to the election to vote in the election. Id. Therefore, we concluded “the thirty-day residency requirement applies to mayors and council members. As such, we believe an ordinance requiring a six-month residency requirement contravenes of both the South Carolina Constitution and state law.” Id.

As we stated in other opinions, “this Office will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law.” Op. Att’y Gen., 2013 WL 3762706 (S.C.A.G. July 1, 2013). Finding no change in the applicable law since our 2019 opinion, we continue to believe municipalities are without authority to impose durational residency requirements outside of the thirty-day requirement imposed by state law. Therefore, while we cannot declare the ordinance passed by the Town of Latta invalid, we believe it would run afoul of South Carolina law.

Conclusion

Ordinances are legislative enactments and therefore, are presumed valid. Op. S.C. Att’y Gen., 2021 WL 3703908 (S.C.A.G. Aug. 3, 2021) (citing U.S. Fid. & Guar. Co. v. City of Newberry, 257 S.C. 433, 438, 186 S.E.2d 239, 241 (1972)). In addition, this Office does not have the authority to invalidate a municipal ordinance. Op. Att’y Gen., 2006 WL 981690 (S.C.A.G. Mar. 31, 2006). However, based on an opinion issued by this Office in 2019, municipalities do not have authority to impose additional requirements on candidates for municipal offices, including a residency requirement. Op. Att’y Gen., 2019 WL 4894130 (S.C.A.G. Sept. 17, 2019). Furthermore, state law and the South Carolina Constitution require municipal officers to meet the requirement of a



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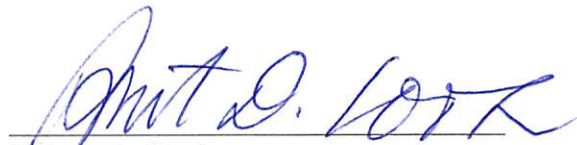
qualified elector, which includes a thirty-day residency requirement. See S.C. Code Ann. § 5-15-20 (requiring mayors and municipal council members to be qualified electors); S.C. Const. art. II § 5 (requiring municipal electors to reside in the municipality in which he or she offers to vote for thirty days prior to the election). Because the South Carolina Constitution and state law impose a residency requirement, we believe a court would invalidate any residency requirement imposed by a municipality that conflicts with this requirement. As such, we believe a court could find the ordinance passed by the Town of Latta in violation of the state law.

Sincerely,



Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General