



ALAN WILSON
ATTORNEY GENERAL

September 28, 2022

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Dear Ms. Ward:

We received your letter requesting an opinion of this Office concerning Beaufort County Council's ability to adopt an ordinance changing their own salaries and making the change "effective at the time in which the salary change is approved" in light of section 4-9-100 of the South Carolina Code.

Law/Analysis

Section 4-9-100 of the South Carolina Code (2021) provides as follows regarding changes in salary for members of county councils:

After adoption of a form of government as provided for in this chapter, council shall by ordinance prescribe the salary and compensation for its members. After the initial determination of salary, council may by ordinance adjust the salary but the ordinance changing the salary is not effective until the date of commencement of terms of at least two members of council elected at the next general election following the enactment of the ordinance affecting the salary changes at which time it will become effective for all members.

In your letter, you present the following scenario:

Beaufort County Council members are elected in even years only. Assume that on April 1, 2022, County Council adopts an ordinance which states:

Effective July 1, 2022, and every year thereafter, any cost of living increase which is approved in an annual budget for county employees shall also apply to council members' salary.

Assume further that on June 30, 2022, Council approves a 3% cost of living adjustment ("COLA") for all employees, and elected officials as part of the annual budget (effective July 1, 2022). It is clear that under S.C. Code Section 4-9-100, the salary increase for members of Council will not become effective

until the date of commencement of the terms of at least two member of Council who are elected at the next general elections (i.e. until January 2023). But assume that on June 30, 2023 Council again approves a 3% COLA for all employees and elected officials as part of the annual budget (effective July 1, 2023).

Based on this scenario, you ask: "Can members of Council begin receiving the COLA on July 1, 2023 (the same date on which county employees begin receiving it) pursuant the April 1, 2022 Ordinance or does S.C. Code Sec. 4-9-100 require them to wait until after the next general election?"

We begin with the plain language contained in section 4-9-100.

It is well-established that "[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Id. (quotation omitted). Thus, we must follow the plain and unambiguous language in a statute and have "no right to impose another meaning." Id.

Grier v. AMISUB of S.C., Inc., 397 S.C. 532, 535-36, 725 S.E.2d 693, 695 (2012). Section 4-9-100 gives county councils the authority to change their own salaries via ordinance, but restricts the effectiveness of such an ordinance "until the date of commencement of terms of at least two members of council at the next general election following the enactment of the ordinance affecting the salary changes" Therefore, at a minimum any salary change cannot take effect until at least two of the councilmembers have commenced a new term of office.

In addition, you mentioned two opinions issued by this Office in 1978 and 1999 interpreting the salary change requirements under section 4-9-100. In the 1978 opinion, we determined a county council must comply with section 4-9-100 even if their council members' salaries are included in the county's budget ordinance. Op. Att'y Gen., 1978 WL 35007 (S.C.A.G. July 31, 1978). The 1999 opinion addressed several questions regarding county council compensation. Op. Att'y Gen., 1999 WL 397927 (S.C.A.G. Feb. 17, 1999). In line with our 1978 opinion, we concluded a change in salary was not required to be in a separate ordinance. Citing a 1996 opinion addressing the same issue in regard to municipal councilmembers, we concluded:

Using the 1996 opinion as a guide, it would appear that an increase in salary for county council members would not necessarily have to be contained in a distinct and separate ordinance, but may be a part of another ordinance, such as a budget ordinance. However, the intent of Section 4-9-100 would not be met if a county council attempted to give themselves a pay raise without clear indication that

they are doing so. Therefore, if council included a pay raise in another ordinance, specific reference to council's pay raise in such ordinance would be required.

Id. Additionally, and very relevant to your question, we considered whether a county council could set up automatic increases for itself by stating they will receive a cost of living or longevity increase that does not require specific action when the increases are due. Id. Based on the requirements set forth in section 4-9-100, we determined:

The clear language of this statute seems to preclude an automatic salary increase for members of council as a salary increase requires council action, i.e., an ordinance. Furthermore, an automatic yearly salary increase would violate the language of the statute regarding the effective date of salary increases. See Lee v. City of Taylor, 234 N.W.2d 483 (Mich Ct. App 1975) (ordinance containing cost-of-living escalator clause was violative of charter provision prohibiting salary increase during term of office).

In your letter, you aim to distinguish Beaufort County Council's proposed ordinance from that considered in the 1999 opinion. You state:

Here, the County is seeking an opinion on whether an ordinance may be adopted to allow for a salary change to occur on the date in which said salary change is approved, and the said ordinance would not be effective until "the date of commencement of terms of at least two members of the council elected at the next general election" as stated in Section 4-9-100 of the Code.

While the facts contained in your letter are somewhat different than those considered in 1999, we are concerned that the ordinance proposed by the Beaufort County Council ("County Council") does not comply with section 4-9-100. While County Council would have to approve the budget on an annual basis, the ordinance sets forth a mechanism by which councilmembers will receive an automatic increase in salary when an annual budget includes a cost of living increase for employees. As we emphasized in our 1999 opinion, any type of salary increase which occurs without action by the council runs afoul of section 4-9-100. Therefore, we do not believe County Council may adopt an ordinance allowing for a cost of living increase for council members dependent upon when employees receive such increases regardless of whether the initial increase occurs after the commencement of new terms by at least two County Council members.

Conclusion

Section 4-9-100 allows county councils to change their own salaries so long as they do so by ordinance and the salary change does not take effect until the terms of at least two members elected at the next general election commence. While this Office recognizes section 4-9-100 does not require a separate and distinct ordinance for a salary change, it does require action on the part of

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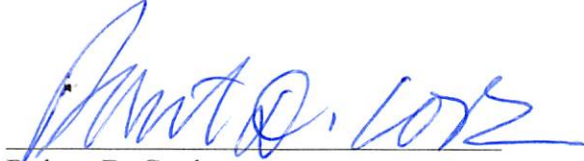
the council and a clear indication of a change in the council members' salaries. The ordinance presented in your letter indicates Beaufort County Council members would receive a cost of living increase based on whether County employees receive a cost of living increase pursuant to the County's annual budget. Although County Council would have to take action to approve the budget on an annual basis, we are concerned that such action would not satisfy the requirement that County Council clearly indicate they are changing their own salaries. We are also concerned that such an ordinance would amount to an automated increase because the approval of a cost of living increase for County employees automatically triggers an increase for County Council members. As such, we believe the ordinance as proposed may be in conflict with section 4-9-100.

Sincerely,



Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General