



ALAN WILSON
ATTORNEY GENERAL

February 28, 2022

Jennifer C. Blumenthal, Esq.
100 Calhoun St.
Suite 400
Charleston, SC 29401

Dear Ms. Blumenthal:

Attorney General Alan Wilson has referred your letter to the Opinions section. The letter states the following:

This request for an opinion is being submitted on behalf of the Commissioners of Public Works of the City of Charleston, South Carolina, d/b/a Charleston Water System ("CWS") regarding the interpretation of Section 5-31-220 of the Code of Laws of South Carolina, 1976, as amended (the "Code"), specifically the phrase "such commissioners," as used in that section.

Section 5-31-220 of the Code relates to special provisions for cities over 50,000 and states, in part, "such commissioners of public works shall serve without compensation."

In cities of fifty thousand inhabitants or more, in addition to the three commissioners of public works to be elected as provided in § 5-31-210, the mayor and the chairman of the committee on water supply, if there be such a committee, shall be ex officio commissioners of public works. In such cities such commissioners of public works shall serve without compensation. The board of commissioners of public works in any such city shall fill any vacancy occurring in the commission by appointment for the unexpired term, appointment to be made by the remaining commissioners, except in the case of an ex officio member of the commission.

Does the phrase "such commissioners" in Section 5-31-220 of the Code refer only to the ex officio commissioners of public works referenced in the preceding sentence or does it refer to all commissioners of public works in cities over 50,000?

If it is intended to bar all commissioners of public works in cities over 50,000 from receiving compensation, are health insurance and similar benefits deemed compensation for the purposes of Section 5-31-220?

Law/Analysis

It is this Office's opinion that the prohibition on compensation in S.C. Code § 5-31-220 only prohibits providing ex officio commissioners compensation for their service on a board of commissioners of public works ("CPW") in cities of fifty thousand inhabitants or more. Attorney General McLeod's April 21, 1976 opinion addressed "whether a city can provide a salary or per diem to the Commissioners of Public Works created under the provisions of Section 59-172 of the [1962] Code of Laws," which is currently codified as Section 5-31-220 in the 1976 Code of Laws. 1976 S.C. Op. Att'y Gen. 159 (1976) (emphasis added). The opinion succinctly concluded, "Insofar as compensation is concerned, I think that the answer is that this cannot be done." Id. Subsequent opinions have cited McLeod's opinion to say "a city could not provide salaries to a commission of public works established under Section 5-31-220." Op. S.C. Att'y Gen., 2005 WL 2250219 (August 24, 2005) (emphasis added); see also Op. S.C. Att'y Gen., 1997 WL 255950 (April 7, 1997) (same). As will be discussed further below, these opinions misstate Attorney General McLeod's conclusion insofar as they advise against providing compensation to all commissioners of public works, rather than merely the ex officio commissioners added by Section 5-31-220. For this reason, those opinions are overruled on this point. See Op. S.C. Att'y Gen., 2017 WL 1528200 (April 13, 2017) ("Traditionally, this Office does not overrule a prior opinion unless there has been a change in the law or where there is clear error.").

While this Office has previously addressed section 5-31-220, this opinion will rely on the rules of statutory construction to analyze the questions presented. The primary rule of statutory construction is to "ascertain and give effect to the intent of the legislature." Kerr v. Richland Mem'l Hosp., 383 S.C. 146,148, 678 S.E.2d 809, 811 (2009) (citations omitted). The South Carolina Supreme Court has held that when the meaning of a statute is clear on its face, "then the rules of statutory interpretation are not needed and the court has no right to impose another meaning. The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation." Catawba Indian Tribe of S.C. v. State, 372 S.C. 519, 525-26, 642 S.E.2d 751, 754 (2007) (citations omitted) (internal quotations omitted); see also Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (holding that where a statute's language is plain and unambiguous, "the text of a statute is considered the best evidence of the legislative intent or will."). "A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers." State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), *reh'g denied* (Aug. 5, 2015). Where statutes deal with the same subject matter, it is well established that they "are in *pari materia* and must be construed together, if possible, to produce a single, harmonious result." Penman v. City of Columbia, 387 S.C. 131, 138,691 S.E.2d 465,468 (2010). With these principles in mind, this opinion will next look to specific provisions within the text of section 5-31-220, related statutes, and legislative history to guide its analysis.

The plain language of section 5-31-220 indicates legislative intent that the prohibition on compensation apply solely to ex officio commissioners. The first sentence of section 5-31-220 contains special provisions regard the composition of CPWs for cities with populations of over 50,000 persons; namely, it requires that one or two commissioners serve in an ex officio capacity “in addition to the three commissioners” that are elected to serve on the CPW directly.¹ The second sentence contains the prohibition on compensation which states, “In such cities such commissioners of public works shall serve without compensation.” *Id.* The use of the word “such” in relation to both “cities” and “commissioners” limits the scope of the prohibition. “Such” is commonly understood to refer to something that has previously been described. *See* Merriam-Webster Online, <https://www.merriam-webster.com/dictionary/such> (“of the character, quality, or extent previously indicated or implied”); *see also* American Heritage College Dictionary 1356 (3d. ed. 1993) (“Such- adj. 1.a. Of this kind”). And so, the words “such cities” refers to the previously mentioned cities, those of fifty thousand inhabitants or more. By the same token, the words “such commissioners” refers to the previously mentioned commissioners, the ex officio commissioners of public works.²

Further, when section 5-31-220 is read in context with sections 5-31-210 and -215, it is clear that the three elected commissioners of public works are established under separate statutory authority from the ex officio commissioners. *See Penman, supra.* As originally adopted, section 5-31-210 authorized the creation of CPWs without reference to a municipality’s population. *See* 1896 (22) 83. Until 1980, this section made no mention of municipal population and did not otherwise provide for commissioners beyond the three elected commissioners.

At any election for bonds held to meet the costs of acquiring property of the character referred to in § 59-241 the elector shall vote for three citizens of the city or town ... The officers so elected and their successors in office shall be known as the commissioners of public works of such municipality ...

1962 Code § 59-171 (emphasis added). While section 5-31-210 was subsequently amended to permit municipalities with populations of less than 50,000 to add “two additional commissioners,” section 5-31-220 has not and remains as amended in 1940. 1989 Act No. 117, § 1; *see also* S.C. Code § 5-31-215 (adopted in 1995 to permit ex officio commissioners in cities with “a population

¹ S.C. Code § 5-31-220.

In cities of fifty thousand inhabitants or more, in addition to the three commissioners of public works to be elected as provided in § 5-31-210, the mayor and the chairman of the committee on water supply, if there be such a committee, shall be ex officio commissioners of public works.

² The 1932 Code provided, “That in such cities said commissioners of public works shall serve without compensation.” 1932 Code § 7281 (emphasis added). The change to “such” in the current version of South Carolina Code does not appear to result from legislative amendment. However, employing either “such” or “said” supports interpreting the prohibition’s reach narrowly to apply only to the commissioners previously mentioned; the ex officio commissioners. *See* SAID, Black’s Law Dictionary (11th ed. 2019) (“said adj. (13c) Aforesaid; above-mentioned”); American Heritage College Dictionary 1200 (3d. ed. 1993) (“Said-adj. Law. Aforementioned”).

of more than thirty thousand persons and fewer than fifty thousand persons.”). At the time it was last amended, section 5-31-220 was the sole statute to authorize commissioners beyond the three elected commissioners. In this context, at the time Attorney General McLeod authored his opinion, it was clear that Section 5-31-220 did not create the three popularly elected commissioners or create a separate category of CPW; it only added ex officio commissioners to CPWs when the population threshold is crossed. See 1962 Code § 59-172 (“[I]n addition to the three commissioners of public works to be elected as provided in § 59-171 ...”) (emphasis added). Therefore, when reading Attorney General McLeod’s conclusion that compensation is prohibited for “the Commissioners of Public Works created under the provisions of Section 59-172,” it should be understood to apply solely to the ex officio commissioners, but not to the three commissioners created under section 5-31-210. 1976 S.C. Op. Att’y Gen. 159 (emphasis added). This Office’s opinions stating the prohibition on compensation in section 5-31-220 applies to entire CPWs are incorrect and are reversed on this point.

Conclusion

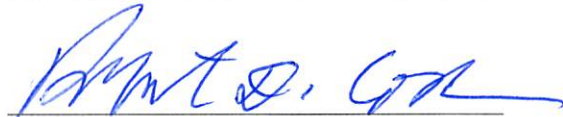
As is discussed more fully above, it is this Office’s opinion that the prohibition on compensation in S.C. Code § 5-31-220 only prohibits providing ex officio commissioners compensation for their service on a board of commissioners of public works in cities of fifty thousand inhabitants or more. The plain language of the compensation prohibition demonstrates legislative intent that it was designed to apply to commissioners who are compensated under other authority; those serving in an ex officio capacity. See *id.* (“In such cities such commissioners of public works shall serve without compensation.”) (emphasis added).

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General