



ALAN WILSON
ATTORNEY GENERAL

August 25, 2022

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Columbia, SC 29211

Dear Mr. Davis:

We received your request for an opinion in your capacity as the attorney for the Town of Allendale regarding the role of a mayor in presiding over town council meetings under a council form of government. This opinion sets out our Office's understanding of your questions and our response.

Issue (as quoted from your letter):

The Town of Allendale operates under the council form of government. The Town Council consists of seven members, which includes the mayor. Customarily, the Mayor presides over Town Council meetings. The Town Council is considering the possibility of designating the presiding officer for meeting by ordinance.

Does the Mayor have to preside over meetings under the council form of government or may the Council designate the presiding officer?

Law/Analysis:

Our Office has identified several prior opinions which relate to a mayor presiding over a municipal council meeting. We also have discovered that at least one of these opinions is inconsistent with the others. We appreciate this opportunity to clarify the matter.

South Carolina municipalities generally are governed by Title 5 of the South Carolina Code. These laws include a relevant statute which governs council meetings in general: subsection 5-7-250(b) provides that "[t]he council shall determine its own rules and order of business and shall provide for keeping minutes of its proceedings which shall be a public record." S.C. Code Ann. § 5-7-250(b).

More specifically, municipal governments are organized according to one of three forms of government set out in Chapters 9, 11, and 13 of Title 5. Chapter 9 governs the mayor-council form of government, Chapter 11 governs the council form, and Chapter 13 governs the council-manager form. Each of these chapters contain statutes which are distinct from each other, but also are analogous to each other in that they set out the respective powers and duties of members of municipal government:

- Section 5-9-30, titled “Responsibilities and powers of mayor” controls in the mayor-council form of government;
- Section 5-11-30, titled “Legislative and administrative powers of municipality vested in municipal council” controls in the council form of government; and
- Section 5-13-30, titled “Powers and duties of municipal council” controls in the council-manager form of government.

Cf. S.C. Code Ann. § 5-9-30, § 5-11-30, § 5-13-30. Our Office has observed that these statutes are “instructive for what they provide and for what they fail to provide.” *Op. S.C. Att’y Gen.*, 1995 WL 810374 (December 6, 1995). This opinion will address each of these code sections in the context of prior opinions of this Office discussing them.

First, section 5-9-30 governs a mayor-council form of government and reads in relevant part:

The mayor shall be the chief administrative officer of the municipality. He shall be responsible to the council for the administration of all city affairs placed in his charge by or under Chapters 1 through 17. He shall have the following powers and duties:

...

(3) to preside at meetings of the council and vote as other councilmen

S.C. Code Ann. § 5-9-30 (emphasis added). Thus, in a mayor-council form of government, the Code expressly charges mayor with the power and duty to preside at a council meeting. *Id.* Furthermore, in this form of government a council generally cannot assign away duties which section 5-9-30 expressly charges to the mayor. *See Op. S.C. Att’y Gen.*, 2012 WL 440544 (January 13, 2012). Our Office has recognized this principle of law in several prior opinions, including an opinion issued in 2012 which discussed which duties could be assigned to a municipal clerk. *See id. & internal citations therein.* We will refer to this opinion herein as the “2012 opinion.”

Next we turn to section 5-13-30, which governs a council-manager form of government and reads in relevant part:

All legislative powers of the municipality and the determination of all matters of policy shall be vested in the municipal council, each member, including the mayor, to have one vote. Without limitation of the foregoing, the council shall:

(1) Employ a manager

S.C. Code Ann. § 5-13-30. In 1995, our Office opined on several questions related to the council-manager form of government, including the question of whether the council could effectively “[eliminate] the mayor's power to run meetings” by selecting another presiding officer. *Op. S.C. Att’y Gen.*, 1995 WL 810374 (December 6, 1995). Our Office concluded that the council could do so:

in the council-manager form of municipal government, the mayor is not required by statute to be the presiding officer of the council. Section 5-7-250(b) authorizes municipal councils to establish their own rules, and I am of the opinion that selection of the presiding officer under the council-manager form of government could be within those rules.

Id. (emphasis added). This opinion distinguished section 5-9-30 because that statute is specific to the mayor-council form of government. *See id.*, accord *Op. S.C. Att’y Gen.*, 2009 WL 1649231 (May 8, 2009) (concluding that in a Council-Manager form of government, “the City has the authority to determine who shall serve as the presiding officer at City Council meetings.”). We will refer to this opinion herein as the “1995 opinion.”

Finally we turn to section 5-11-30, which governs a council form of government and reads in full:

[a]ll legislative and administrative powers of the municipality and the determination of all matters of policy shall be vested in the municipal council. Each member of council, including the mayor, shall have one vote.

S.C. Code Ann. § 5-11-30. Similar to the council-manager form of government in section 5-13-30, and in contrast to the mayor-council form of government in 5-9-30, there is no express requirement in this statute that the mayor preside over a council meeting in a council form of government. *See id.*; cf. S.C. Code Ann. § 5-13-30 & § 5-9-30. This statute is silent as to any

specific powers of the mayor beyond the right to vote as a member, and all legislative powers and matters of policy are vested in the council as a body. S.C. Code Ann. § 5-11-30.

As applied to your question, the most logical construction of section 5-11-30 is that in the absence an express statutory charge to the mayor to preside over a meeting, a municipal council in a council form of government may rely upon section 5-7-250(b) to choose another council member to preside at meetings. This construction is consistent with the reasoning of our 1995 opinion relating to the council-manager form of government, consistent with our 2012 opinion relating to the mayor-council form of government, and consistent with the statutory scheme as a whole. *Cf. Ops. S.C. Att’y Gen.*, 1995 WL 810374 (December 6, 1995) & 2012 WL 440544 (January 13, 2012).

However, we discovered at least one prior opinion of this Office with the opposite conclusion. An opinion issued in 2014 considered almost exactly the same question presented here: whether “a city council in a council form of municipal government [may] vote the mayor pro tempore instead of the mayor as the presiding officer at city council meetings.” *Op. S.C. Att’y Gen.*, 2014 WL 1511520 (March 27, 2014). That 2014 opinion concluded that it could not, on the basis that “a council cannot usurp duties that are specifically granted statutorily to a mayor.” *Id.* This reasoning is flawed, because there are no such duties in the council form of government. *See* S.C. Code Ann. § 5-11-30. In support of its conclusion, the 2014 opinion cited the 2012 opinion discussed above, which related specifically to the mayor-council form of government, and not the council form of government presented in the question. *Id.*; *cf. Op. S.C. Att’y Gen.*, 2012 WL 440544 (January 13, 2012). The 2014 conclusion also contradicted the reasoning of the 1995 opinion which construed section 5-9-30 to apply uniquely to the mayor-council form of government. *Cf. Op. S.C. Att’y Gen.*, 1995 WL 810374 (December 6, 1995).

“The standard for review of opinions issued previously by this Office is whether such opinion is ‘clearly erroneous.’ A prior opinion will not be overruled unless and until it is found to be clearly erroneous.” *Op. S.C. Att’y Gen.*, 1991 WL 632941 (March 14, 1991). As described above, our 2014 opinion relied on a body of law that it should have distinguished as unique to the mayor-council form of government, as our 1995 opinion properly did. *Cf. Op. S.C. Att’y Gen.*, 1995 WL 810374 (December 6, 1995). For this reason, our careful review has convinced us that the conclusion reached in our 2014 opinion is clearly erroneous.

Conclusion:


In conclusion, we do not find any provision of South Carolina law mandating who shall preside over a council meeting held under a council form of municipal government. *See* S.C. Code Ann. § 5-11-30. Therefore, consistent with the better-reasoned prior opinions of this Office, we opine that a municipality organized under a council form of government pursuant to

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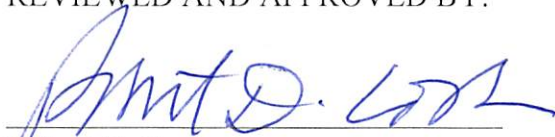
Chapter 11 of Title 5 may – through appropriate parliamentary procedure – choose a council member other than the mayor to preside over its meetings. *See Ops. S.C. Att’y Gen.*, 1995 WL 810374 (December 6, 1995), 2009 WL 1649231 (May 8, 2009). We appreciate this opportunity to clarify certain prior opinions of this Office which have concluded or implied otherwise.

We hereby overrule the following opinions of this Office to the extent that they contradict the conclusions stated herein: *Op. S.C. Att’y Gen.*, 2014 WL 1511520 (March 27, 2014) and *Op. S.C. Att’y Gen.*, 2013 WL 204787 (January 3, 2013).

Sincerely,


David S. Jones
Assistant Attorney General

REVIEWED AND APPROVED BY:


Robert D. Cook
Solicitor General