

The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLES MOLONY CONDON  
 ATTORNEY GENERAL

April 21, 1997

The Honorable Carmen R. Bunch  
 Mayor, City of Isle of Palms  
 P.O. Drawer 508  
 Isle of Palms, South Carolina

Re: Informal Opinion

Dear Mayor Bunch:

Attorney General Condon has forwarded your recent opinion request to me for reply. You inform this Office that the Isle of Palms City Council (hereinafter "City Council") is considering passage of an emergency powers ordinance that would delegate certain specified powers and functions to the City Administrator, or other designee of the City Council. You ask whether the City Council has the authority to confer these powers on a city employee or other unspecified person.

The ordinance in question is Ordinance No. 1996-19 (hereinafter "the Ordinance"). The Ordinance is entitled "AN ORDINANCE TO DELETE SECTION 1-2-5 OF THE ISLE OF PALMS CITY CODE OF ORDINANCES REGARDING EMERGENCY POWERS OF MAYOR AND TO ESTABLISH EMERGENCY POWERS OF THE CITY COUNCIL AND THE CITY ADMINISTRATOR." In short, the Ordinance gives the City Council the power to declare a state of emergency in the city based on the occurrence of certain specified events. Further, the City Administrator may temporarily declare a state of emergency until such time as City Council may convene to act upon such emergency.

The threshold question regarding the validity of the Ordinance is whether the City Council and the City Administrator have the authority under the laws of this state to declare a state of emergency. Therefore, this opinion will first answer this threshold question followed by an answer to the specific question raised in your request.

The health, welfare, and safety of the lives and property of the people of this state are beyond question matters of public concern, and reasonable regulations and laws designed to preserve and protect the same are contained in the police power inherent in the sovereign. See Article XII, Section 1 of the Constitution of the State of South Carolina. There is no similar inherent "police power" in political subdivisions such as municipalities, as municipalities derive their authority from the sovereign. Consequently, the General Assembly provides by general law for the structure, organization, powers, duties, functions, and responsibilities of municipalities. Article VIII, Section 9.

In furtherance of its Constitutional mandate, the General Assembly has provided general legislation for the governance of municipalities. Home Rule was accomplished through the passage of Act No. 283, 1975 Acts and Joint Resolutions. Section 5-7-30 of the Code (Supp. 1996) sets forth the powers conferred upon municipalities. This provision makes it clear that the grant of power is subject to the general laws of the State. There is nothing contained in this list of powers that can be reasonably construed to confer upon a municipality the extraordinary authority to declare a state of emergency. In another portion of the Home Rule legislation, municipalities have been granted the limited power to adopt emergency ordinances to meet public emergencies affecting life, health, safety or property of the people. The emergency ordinance, which may be adopted upon affirmative vote of at least two-thirds of the council members present, expires automatically as of the sixty-first day following the date of enactment. S.C. Code Ann. § 5-7-250 (1977).

The General Assembly, apparently recognizing that actual or threatened disaster or public calamity will often extend beyond political boundaries and exceed local capabilities, has enacted general legislation dealing with civil defense and disaster preparedness at the State level. In 1979, the General Assembly established the South Carolina Emergency Preparedness Division within the Office of the Adjutant General and seemingly shifted to the State level the overall and final responsibility for emergency preparedness and response. See S.C. Code Ann. § 25-1-420 (1989).

The Governor has been granted a wide range of emergency powers to further enable the State to respond effectively to emergencies. S.C. Code Ann. § 25-1-440 (1989 & Supp. 1996). Among the powers granted to the Governor are as follows:

- (a) The Governor, when an emergency has been declared, as the elected Chief Executive of the State, shall be responsible for the safety, security and welfare of the State and shall be empowered with the following additional authority to adequately discharge this responsibility:

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(1) Issue emergency proclamations and regulations and amend or rescind them. Such proclamations and regulations shall have the force and effect of law as long as the emergency exists.

(2) Declare a state of emergency for all or part of the State if he finds a disaster has occurred, or that the treat thereof is imminent, and extraordinary measures are deemed necessary to cope with the existing or anticipated situation. A declared state of emergency shall not continue for a period of more than fifteen days without the consent of the General Assembly.

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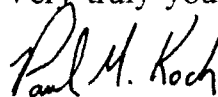
Given the existence of the statute expressly empowering the Governor to declare a state of emergency for any part of the State, I believe that local governments have been pre-empted in the matter. It appears that only the Governor has the clear legislative authority and available resources at his command to declare a state of emergency and order actions in accordance with such declaration. See, Op. Atty. Gen. dated September 5, 1980. Section 5-7-250 gives municipalities the power the adequately respond to public emergencies, but not the power to declare such.

The next question is whether the City Council can delegate the power to declare a state of emergency to the City Administrator. Since the City Council does not have the authority to declare a state of emergency, it follows that the City Council can not delegate a power it does not possess to the City Administrator.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch

Assistant Attorney General