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The State of South Carolina
# OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

January 20, 2004

Mr. Ernest B. Segars
Laurens County Administrator
Post Office Box 445
Laurens, South Carolina 29360-0445

Dear Mr. Segars:

In a letter to this office you requested review of Laurens County Ordinance No. 574 which provides for a seven member Planning Commission in Laurens County. You particularly questioned a provision which states that "(a)n appointee...(to the Planning Commission).. may reside in the unincorporated areas of the county or in an incorporated area which does not have an existing Planning Commission in place." Acknowledgment was made in the same provision that the incorporated municipalities of Clinton and Laurens already provided planning through their respective Planning Commissions.

Pursuant to S.C. Code Ann. Section 4-9-170 (1986) a county council "shall provide by ordinance for the appointment of all county boards, committees and commissions whose appointment is not provided for by the general law or the Constitution." See also: S.C. Code Ann. Section 6-29-320 (Supp. 2003) ("The county council of each county may create a county planning commission."). It is generally held that the determination of the qualifications or disqualifications for an office are a matter for the determination of the appointing authority. See: Op. Miss. Atty. Gen. dated February 5, 1981; Wirzberger v. Watson, 114 N.E.2d 15 (N.Y. 1953). In County of Nassau v. New York State Public Employment Relations Board, 547 N.Y.S.2d 339 (1989), it was determined that an individual was qualified for a position if he or she met the qualifications established by the State Constitution, the legislature or the appointing authority. As stated by the court in In the Matter of Needleman v. County of Rockland, 704 N.Y.S.2d 887 (N.Y. 2000), "(t)he Courts will not interfere with the discretion of the appointing authority to determine the qualifications of candidates unless the determination warrants judicial intervention on the ground that it is irrational and arbitrary." Consistent with such, in my opinion, the provision establishing a restriction for membership on the Planning Commission to individuals residing in unincorporated areas or incorporated areas without a Planning Commission would be upheld as a proper determination by the county council of qualifications for that position.

You also questioned the following provision:

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> It is understood that the zoning and land use element was reviewed by the Commission in 2002. An advisory referendum was held and the voters overwhelmingly indicated that zoning and land use was not desired in Laurens County. In light of this, Council directs that this element shall not be revisited or considered as provided for by the Planning Enabling Act and shall not be enacted or implemented by County Council without an advisory referendum by the citizens of the County of Laurens held during a general election.

(emphasis added). You questioned whether the Council may bind future actions by another Council by such referenced language.

An opinion of this office dated March 23, 1992 determined that a legislative body cannot ordinarily restrict the authority of its successor to amend ordinances. As determined in an opinion dated March 31, 1998

> In adopting an act, ordinance or rule, a legislative body acts in a legislative capacity. However, such act, ordinance, or rule, once adopted, is not necessarily binding upon future legislative bodies, which bodies are free to amend or modify previous actions taken.

Another opinion of this office dated October 9, 1985 held that "one council cannot restrict the power of its successors to amend ordinances". Reference was made to the decision of the United States Supreme Court in Manigault v. Springs, 199 U.S. 473 (1905) where a statute required the State legislature to follow certain procedures, including the necessity of a petition, prior to enacting legislation. A subsequent legislature refused to follow the statutory procedure in enacting subsequent legislation. The Court concluded:

> This law was doubtless intended as a guide to persons desiring to petition the legislature for special privileges, and it would be a good answer to any petition for the granting of such privileges that the required notice has not been given; but it is not binding upon any subsequent legislature, not does the noncompliance with it impair or nullify the provisions of an act passed without the requirement of such notice.

199 U.S. at 487. It was noted that the rules of construction applicable to statutes are also generally applicable to ordinances. See: Barker v. Smith, 10 S.C. 226 (1878). Consistent with such, in my opinion, the attempt by the referenced language in the Laurens County ordinance to bind subsequent action by a future council would be improper and without authority.

With kind regards, I am,

Very truly yours,

Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General