



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

December 13, 2005

Sammy G. Diamaduros, Esquire
Union County Attorney
108 West South Street
Union, South Carolina 29379

Dear Mr. Diamaduros:

In a letter to this office you questioned whether Union County Ordinance Section 2-204 is enforceable in its current form. You explained that subsections (a) and (b) of the ordinance indicate that a person may not serve more than two consecutive terms; however, subsection (c) appears contradictory with respect to whether such provisions should apply retroactively or prospectively. Specifically, you inquire as to whether subsections (a) and (b) are enforceable as this ordinance stands or whether subsection (c) renders the entire ordinance invalid.

Several principles of statutory construction are pertinent to your inquiry. The cardinal rule of statutory interpretation is to ascertain and give effect to a council's intent. *State v. Martin*, 293 S.C. 46, 358 S.E.2d 697 (1987). Intent is typically determined by applying the words used in their usual and ordinary significance. *Martin v. Nationwide Mut. Ins. Co.*, 256 S.C. 577, 183 S.E.2d 451 (1971). The words of an ordinance must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. *Bryant v. City of Charleston*, 295 S.C. 408, 368 S.E.2d 899 (1988). Additionally, courts must apply the clear and unambiguous terms of an ordinance according to their literal meaning. *State v. Blackmon*, 304 S.C. 270, 403 S.E.2d 660 (1991).

This Office has also recognized the longstanding principle that a municipal ordinance is presumed valid and an ordinance will not be declared invalid unless it is clearly inconsistent with general state law. *Hospitality Assn. of S.C. v. County of Chas.*, 320 S.C. 219, 464 S.E.2d 113 (1995); *Scranton v. Willoughby*, 306 S.C. 421, 412 S.E.2d 424 (1991). Furthermore, any ordinance must be demonstrated to be unconstitutional beyond all reasonable doubt. *Southern Bell Telephone and Telegraph Co. v. City of Chas.*, 285 S.C. 495, 331 S.E.2d 333 (1985). As noted in a prior opinion of this Office, dated January 3, 2003, "... keeping in mind the presumption of validity and the high standard which must be met before an ordinance is declared invalid, while this office may comment upon constitutional problems or a potential conflict with general law, only a court may declare an

ordinance void as unconstitutional, or preempted by or in conflict with a state statute. Thus,... an ordinance may continue to be enforced unless and until set aside by a court of competent jurisdiction."

Union County Ordinance Section 2-204 provides for a term limitation on an individual appointed by the Union County Council as a member of a board, committee or commission. Section 2-204 provides as follows:

(a) No person who is appointed as a member of a board, committee, or commission by the county council shall be eligible to serve more than two (2) consecutive terms as a member of such board, committee or commission.

(b) Any person having served two (2) consecutive terms as a member of a board, committee or commission appointed by the county council shall be eligible for re-appointment after the passage of one full term after the end of the last term of such member 's service.

(c) This section shall apply retroactively from the date of its enactment to all current members, boards, committees and commissions appointed by the county council and any person having served two (2) consecutive terms as such member shall be ineligible for re-appointment until passage of the time period specified in paragraph (b) above.

This section shall apply prospectively from the date of its enactment and the limitations enumerated herein shall apply only to those persons appointed after the effective date hereof and any person so appointed shall be eligible to serve two (2) consecutive terms before becoming ineligible for re-appointment.

This section shall apply retroactively from the date of its enactment to the extent that any person serving as a member of a board, committee or commission appointed by the county council may complete the term in which he or she is then serving and shall be eligible to serve one (1) additional consecutive term as such member before he or she becomes ineligible for re-appointment to a consecutive term.

(Ord. of 12-11-96)

In my opinion, the ordinance, while confusing and redundant in some respects, is enforceable. It is apparent that the intent was to provide new appointees two full terms in office and as to those serving in office, these individuals were to serve only their present term and an additional term. Of course, inasmuch as you indicated that the ordinance was adopted in 1996, while the apparent intent was to make provisions for both new appointees and those then serving in office, its applicability to individuals in office at that time would appear to be a moot point.

Mr. Diamaduros
Page 3
December 13, 2005

Part of the confusion appears to be the result of the placement of the paragraphs in the ordinance. First, subsection (a) provides that no individual appointed by the county council shall be eligible to serve more than two consecutive terms in the office to which he was appointed. Furthermore, subsection (b) clearly provides that an individual who has served two consecutive terms shall not be eligible for re-appointment until the passage of one full term after the end of his last term of office.

In my opinion, the order of the paragraphs makes the ordinance confusing. It appears that the paragraph which states "(t)his section shall apply prospectively from the date of its enactment and the limitations enumerated herein shall apply only to those persons appointed after the effective date hereof and any person so appointed shall be eligible to serve two (2) consecutive terms before becoming ineligible for re-appointment" should be read in conjunction with paragraph (a). The paragraph that states "(t)his section shall apply retroactively from the date of its enactment to the extent that any person serving as a member of a board, committee or commission appointed by the county council may complete the term in which he or she is then serving and shall be eligible to serve one (1) additional consecutive term as such member before he or she becomes ineligible for re-appointment to a consecutive term" should be read in conjunction with paragraph (b). Construing such ordinance in that manner would appear to eliminate any ambiguity as to the construction of the ordinance. As a result, it is my opinion that the ordinance is enforceable.

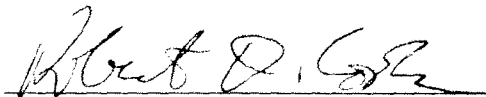
With kind regards, I am,

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General