HENRY MCMASTER
ATTORNEY GENERAL

December 16, 2009

The Honorable Joe Daning
Member, House of Representatives
118 Queensbury Circle
Goose Creek, South Carolina 29445

Dear Representative Daning:

We understand you seek an Attorney General's opinion concerning a personnel policy adopted by Charleston County restricting Charleston County employees ability to seek elected office. You ask that this Office review this policy and provide "an opinion on the constitutionality of this procedure."

Law/Analysis

Attached to your request letter, you provided a copy of Charleston County Personnel Procedure 4.70 governing political activity. Subsection C of this procedure states as follows:

1. Employees may not:
    a. Use their official authority or influence for the purpose of interfering with or affecting the results of an election or nomination for office.

    b. Directly or indirectly attempt to pay, lend, or contribute anything of value to a party, candidate or person for political purposes directly affecting Charleston County Government or directly or indirectly coerce or command another employee to do so.

    c. Attempt to coerce or advise person acting as agents or representatives of companies or firms conducting business with the County to pay, lend, or contribute anything of value to a party committee, organization, agency, candidate or person for political purposes during working hours or at any other time.

d. Be a candidate for elective office in a partisan election.

e. Take active part in political management and political campaigns in partisan elections.

f. Be a candidate for any political party office.

In addition, subsection E of this procedure provides:

> An employee who announces candidacy in a partisan, political election shall submit his resignation effective the date of the announcement or the date of filing, whichever is earlier. An employee, who has submitted his/her resignation and then loses the election for which s/he resigned, may reapply for employment with the County.

In several opinions, this Office addressed the regulation of political activity by public employees. In a 1979 opinion, we addressed the constitutionality of a Berkeley County ordinance regulating political activity of county employees. Op. S.C. Atty. Gen., September 27, 1979. We initially cited section 4-9-30(7) of the South Carolina Code as giving the Berkeley County Council the authority to implement personnel policies. Then, discussing whether such regulation violated the First and Fourteenth Amendments to the United State Constitution, we cited to the Supreme Court's decision in Broadrick v. Oklahoma, 413 U.S. 601(1973). The Court in that case considered the constitutionality of a state statute regulating the political activity of state employees. Broadrick, 413 U.S. at 601. The state statute prohibited state employees from soliciting contributions for political organizations or candidates, holding membership in national, state, or local committees of political parties, and taking part in the management or the affairs of any political party or political campaign. Id. The Court upheld the statute finding that it was neither unconstitutionally vague or over broad. Id.

We also stated "recognizing the important governmental interest in promoting efficiency and integrity in the discharge of official duties and in insulating public employees from political pressures so as to protect their individual rights, other cases have held that such regulatory statutes and ordinances do not contravene the First and Fourteenth Amendments." Op. S.C. Atty. Gen., September 27, 1979 (citing Magill v. Lynch, 560 F.2d 22 (1st Cir. 1977), cert. den. 434 U.S. 1063 (1978); Perry v. St. Pierre, 518 F.2d 184 (2nd Cir. 1975); Pennsylvania ex rel. Specter v. Moak, 452 Pa. 482, 307 A.2d 884 (1973); Annotation, 28 A.L.R.2d 717. See Pickering v. Board of Education, 391 U.S. 563, 20 L.Ed.2d 811, 88 S.Ct. 1731 (1968); Elrod v. Burns, 427 U.S. 347, 366-371, 49 L.Ed.2d 547, 96 S.Ct. 2673 (1976)). We noted that the ordinance in question was less restrictive than the regulations upheld in these decisions and concluded that the ordinance is valid. Id.

In 1998, we considered the validity of an ordinance adopted by the City of Barnwell requiring city employees who become candidates for elective office to resign. Op. S.C. Atty. Gen., March 18, 1998. We stated:

> There is overwhelming support for the proposition that the government has an appropriate and substantial interest in proscribing certain political activities by public employees. Naccarati v. Wilkins TP., PA, 846 F.Supp 405 (W.D.Pa 1993). The leading case on this subject is Broadrick v. Oklahoma, 413 U.S. 601 (1973). In this case, the United States Supreme Court upheld the constitutional validity of a Oklahoma statute which restricted partisan political conduct by state civil service employees. The Court held that a state could prohibit certain public employees from becoming "candidate[s] for nomination or election to any paid public office." Id. Many other courts have also upheld the validity of statutes and ordinances similar to Ordinance No. 1997-97-1. In doing so, these courts recognized the important governmental interest in promoting efficiency and integrity in the discharge of official duties and in insulating public employees from political pressures so as to protect their individual rights. Magill v. Lynch, 560 F.2d 22 (1st Cir. 1977); Moses v. Town of Wytheville, Virginia et al., 959 F.Supp 334 (W.D.Va 1997); Naccarati v. Wilkins TP., PA, supra; Pennsylvania ex rel. Specter v. Moak, 307 A.2d 884 (1973).

Id. Based on this authority, we concluded that the ordinance "is being offered to promoted important governmental interests similar to the one discussed in the previously cited cases, it would most likely withstand a challenge to its constitutionality." Id.

A 1982 opinion of this Office addressed the validity of a Department of Mental Health policy stating that an employee of the department who becomes a candidate in a partisan election may be terminated. Op. S.C. Atty. Gen., August 24, 1982. Based on the findings and authority cited in our 1979 opinion, we concluded that this policy is valid and does not violate the due process and equal protection clauses of the Fifth and Fourteenth Amendments to the United States Constitution. Id. More recently, we came to a similar conclusion with regard to a Department of Corrections policy restricting political activity of its employees. Op. S.C. Atty. Gen., November 2, 2005.

Based upon these prior opinions, we believe Charleston County likely has an appropriate and substantial interest in limiting the political activities of its employees. Thus, we are of the opinion that a court would likely uphold such a policy as reasonable.

Conclusion

Prior opinions of this Office and various court decisions find that policies and laws restricting the political activity of public employees serve an important governmental interest. We presume that by adopting the policy cited above, Charleston County is attempting to preserve an "important governmental interest in promoting efficiency and integrity in the discharge of official duties and insulating public employees from political pressures so as to protect their individual rights." Op. S.C. Atty. Gen., March 18, 1998. Therefore, we are of the opinion that a court will likely uphold such a policy as constitutional.

Very truly yours,

Henry McMaster
Attorney General

By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General