



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
 ATTORNEY GENERAL

June 6, 2002

The Honorable William David Witherspoon
 Member, House of Representatives
 411 Blatt Building
 Columbia, South Carolina 29211

Re: Informal Opinion

Dear Representative Witherspoon:

By your letter of May 30, 2002, you have requested an opinion from this Office regarding the Applicability of Horry County Ordinance 20-01 to the July 1, 2002 Reappointment of Planning Commission Members. You state that "two opinions are enclosed in this material, one by the County Attorney and another by an individual Attorney for the Planning Commission." You further state that "These opinions are entirely different." You thus ask for an opinion from this Office for clarification.

Based on our research, we defer to the opinion of County Attorney John L. Weaver, who would have been privy to the drafting of Ordinance 20-01 and its adoption by Horry County Council ("Council"). Furthermore, Mr. Weaver would have been in the best position to know and ascertain Council's intent in adopting Ordinance 20-01. Likewise, we defer to the opinion of Mr. Roy Bates, a very experienced and well-respected expert in local government matters. Accordingly, it is our opinion that Ordinance 20-01 is applicable to currently serving Planning Commission Members.

BACKGROUND

In January 1998, the Horry County Council ("Council") passed Ordinance No. 122-97 which abolished a number of commissions, including the Horry County Development Planning and Tourism Commission. In response, Council replaced it with the newly formed Horry County Planning Commission.

Horry Code of Ordinances, Article VI, §2-75 (2001) sets forth the rules governing the composition and membership of boards and commissions of county government generally, and §2-75 provides the following:

Sec. 2-75. Membership and attendance, officers, procedures and other matters pertaining to boards and commissions of county government.

(a) *Membership and Attendance*

(1) *Composition, terms, removal.* Unless specified by county ordinance or otherwise required by state or federal law or regulation, all boards and commissions of county government shall consist of eleven (11) members who are qualified resident electors of the eleven county districts. Provided, however, that the county council may establish by ordinance and appoint ex officio nonvoting members as it deems appropriate.

a. Members shall be appointed to serve staggered four-year terms (except that terms necessary to implement this division may be established by resolution of county council). All terms shall commence July first and end June thirtieth of the appropriate year. Members shall serve until their successors are elected and qualify. Members shall be permitted to serve two (2) consecutive terms on any board or commission upon appointment as prescribed in subparagraph b, below. A member can be reappointed to the board or commission after the initial two (2) consecutive terms as stated above only if the reappointment is separated by a vacancy from the board or commission membership for at least one (1) calendar year. For reappointment purposes, a partial term resulting from an original appointment (to fill out the term of a member leaving for any reason) shall be considered as a full term if the period of appointment for the individual replacing the original member is two (2) years or more. If less than two (2) years, the individual may serve out that term, plus two (2) full terms before vacating the office.

b. Members shall be nominated by the resident county council member with the consent of and appointment by the county council.

On March 8, 2001, Council passed Ordinance 20-01 which amended section 2-75(a)(1) by adding subparagraph "e" which provides as follows:

e. When any board or commission of county government is reorganized or reconstituted, members serving at the time of reorganization or reconstitution may be appointed to serve a new initial term of up to four (4) years without regard to previous service on the board or commission or its predecessor board or commission; a member may only be reappointed to the board or commission if the member has served less than a total of six (6) years (when service of the new initial term and previous service are combined) or if the reappointment is separated by a vacancy from the board or commission membership for at least one (1) calendar year.

LAW/ANALYSIS

Several principles of statutory construction are pertinent to your inquiry. The cardinal rule of statutory interpretation is to ascertain and give effect to council's intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Most often, intent is 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). 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).

The language of §2-75 is clear and unambiguous, and it is our opinion that the six (6) year service limitation is applicable to the Planning Commission. Both the County Attorney John L. Weaver and Attorney Roy Bates reached the same conclusion. As Mr. Bates stated in his opinion: "[t]he language of §2-75 is clear and unambiguous. The legislative intent is apparent on the face of the ordinance that the six (6) year limitation shall apply to total previous service."

A letter from County Attorney Weaver dated December 7, 2001 further evinces Council's intent to enact term limits for any board or commission of county government. Mr. Weaver stated:

Ordinance 20-01 was passed by County Council in 2001, with the purpose of the ordinance being to address situations relating to long-serving commission members who could, seemingly, "begin service again" when a board or commission was reorganized /reconstituted. Until the passage of Ordinance 20-01, there was no mechanism for considering one's total service prior to reorganization.

All of these factors lead to the conclusion that in ordaining, enacting, and ordering Ordinance 20-01, Council clearly intended to place some type of term limit on appointed positions, which are constitutional.

Mr. Lovelace seems to opine that Ordinance 20-01 is being construed retroactively in violation of principles of statutory interpretation as followed by the South Carolina Supreme Court. Specifically, Mr. Lovelace states that:

It has been long held in South Carolina that "[i]n the construction of statutes, there is a presumption that statutory enactments are to be considered prospective rather than retroactive in their operation unless there is a specific provision in the enactment or clear legislative intent to the contrary." S.C. Dep't of Revenue v. Rosemary Coin Machines, Inc., 339 S.C. 25, 28 528 S.E.2d 416, 418 (2000); see also Hyder v. Jones, 271 S.C. 85, 245 S.E.2d 123 (1978). Said another way, "[a] statute is not to be applied

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retroactively unless that result is so clearly compelled as to leave no room for doubt."
American National Fire Ins. Co. v. Smith Grading and Paving, Inc., 317 S.C. 445, 448,
454, S.E.2d 897, 899 (1995).

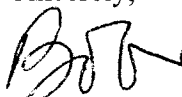
While the above reading of the law is true insofar as it goes, we disagree that these principles control in this situation and thus we disagree with Mr. Lovelace's conclusion. Mr. Lovelace concludes that "the language of ordinance 20-01 fails to address retroactivity. It is, therefore, necessary to attempt to discern council's intent from the language of the ordinance." Mr. Lovelace focused on the meaning of the word "is" in the language of the ordinance which reads: "When any board or commission of county government is reorganized or reconstituted . . ." He thus opined that "[t]he use of the word 'is' constitutes evidence that the ordinance was intended to be applied prospectively." Again, we disagree.

A statute does not operate retroactively merely because it relates to antecedent events, or because part of the requisites of its action is drawn from time antecedent to its passing, but is retroactive only when it is applied to rights accrued prior to its enactment. 82 C.J.S., Statutes, §412 (1953); See, Op. Atty. Gen., dated July 1, 1983. Clearly no member of the Planning Commission has a vested right to hold office. As such, no member accrued any right to hold office prior to the enactment of Ordinance 20-01. Thus, the term limitation is not being construed retroactively in violation of principles of statutory interpretation as followed by the South Carolina Supreme Court. Furthermore, to give Ordinance 20-01 only prospective application, as advocated by Mr. Lovelace, would suspend the initiation of term limits until 2006, thereby perpetuating the service of certain members for four (4) more years. We do not believe this result is what Horry County Council intended.

Accordingly, as Mr. Bates and Mr. Weaver have previously concluded, it is likewise our opinion that the ordinance in question imposes a six (6) year limitation on total previous service. Therefore, Ordinance 20-01 is applicable to presently serving members of the Horry County Council Planning Commission.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,



Robert D. Cook,

Assistant Deputy Attorney General

RDC/jbc