

1450 Luluany



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

November 27, 2002

The Honorable Judith G. Tesla
Mayor Pro Tem, City of Tega Cay
7000 Tega Cay Drive
Tega Cay, South Carolina 29708-3399

Re: Council/Manager form of municipal government

Dear Ms. Tesla:

You have requested an opinion from this Office concerning the duties of a city manager in a Council/Manager form of municipal government. You indicate that the citizens of the City of Tega Cay have recently voted to change the form of government in Tega Cay from Council/Mayor to Council/Manager and that there is some confusion as to the role of the city manager in the new governmental structure. As an example, you indicate that there is some confusion as to whether the manager or the mayor should sign contracts which have been negotiated on behalf of the city. Given this background, you specifically ask, "[c]an the authority and responsibility of the city manager be expanded or limited?"

In the Council/Manager form of municipal government "[a]ll legislative powers of the municipality and the determination of all matters of policy shall be vested in the municipal council, each member, including the mayor, to have one vote." See S.C. Code Ann. §5-13-30. The council is to employ a city manager to carry out the legislative and policy decisions it makes. Id. Section 5-13-90 provides that "[t]he manager shall be the chief executive officer and head of the administrative branch of the municipal government [and] [h]e shall be responsible to the municipal council for the proper administration of all affairs of the municipality" Subsections (1)-(4) of 5-13-90 set forth the specific responsibilities of the manager and subsection (5) provides that the manager shall "[p]erform such other duties as may be prescribed by law or required of him by the municipal council, not inconsistent with the provisions of [Title 5] Chapters 1 through 17" of the Code.

Based on the above, it is my opinion that a municipal council may authorize the city manager to perform duties which are in addition to those specifically set out in the Code as long as the duties are not inconsistent with the provisions of Title 5.¹ Conversely, it is evident that a

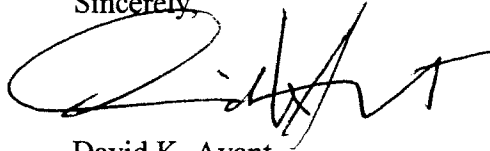
¹ As to the specific example cited in your request, Townes Associates, Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976), implies that a city manager can be granted the authority to make binding agreements in furtherance of city policies.

The Honorable Judith Tesla
November 27, 2002
Page 2

manager may have those additional duties limited should the city council alter, amend or repeal the legislative acts or policy decisions which initially prescribed the duties. Council cannot, however, limit the manager's responsibility to perform those tasks specifically assigned to him in subsections (1)-(4) of 5-13-90 as such would be inconsistent with the provisions of Section 5-13-90(5). Additionally, council cannot prescribe any duties for the manager which amount to a delegation of legislative or policy making powers. See Todd v. Smith, et al., 305 S.C. 227, 407 S.E.2d 644 (1991)(Section 5-13-30 establishes in a city council all legislative and policy making power and city manager has no authority to set city policy).

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 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,

A handwritten signature in black ink, appearing to read 'D. Avant', written over a horizontal line.

David K. Avant
Assistant Attorney General