



ALAN WILSON  
ATTORNEY GENERAL

June 28, 2013

Nick Oxendine, Chairman  
Allendale County Voters Registration & Election Commission  
158 McNair Street  
Allendale, South Carolina 29810

Dear Mr. Oxendine:

Attorney General Alan Wilson has referred your letter of February 8, 2013 to the Opinions section for a response. The following is our understanding of your question presented and the opinion of this Office concerning the issue based on that understanding.

**Issue:** Are staff and employees of the Voters Registration & Election Commission considered county employees when the authority to hire and fire does not reside with the county administrator?

**Short Answer:** Staff and employees of the Voters Registration & Election Commission may be considered employees of the county even though the authority to hire and fire them does not reside with the county administrator.

**Law/Analysis:**

Before we discuss the issue presented in your letter, let us confirm who has the authority to hire and fire employees of the Voter Registration & Election Commission. The Governor appoints election commissioners based on recommendations by the senatorial delegation and at least half of the members of the House from the respective counties. S.C. Code § 7-13-70. This Office has consistently opined that the election commissioners then may turn around and hire and fire a clerk or other employees of the commission. *Ops. S.C. Atty. Gen.*, 2007 WL 3317619 (October 22, 2007); 2005 WL 2652379 (October 11, 2005); 1989 WL 406131 (April 6, 1989).

In order to address your question, let us review some of the relevant law. A public employee is someone who is employed by the State, a county, a municipality, or a political subdivision thereof. S.C. Code § 8-3-100(25). See also *Op. S.C. Atty. Gen.*, 2012 WL 5705584 (October 31, 2012) (citing S.C. Code § 2-17-10(17)). Therefore a county employee implicitly would be a public employee employed by a county. S.C. Code § 4-9-30(7) says [a county government shall have the following enumerated powers...]:

to develop personnel system **policies and procedures** for county employees by which **all county employees** are regulated except those elected directly by the people, and to be responsible for the employment and discharge of county personnel in those county departments in which the employment authority is vested in the county government. **This employment and discharge authority does not extend to any personnel employed in departments or agencies under the direction of an**

elected official or **an official appointed by an authority outside county government.** Any employee discharged shall follow the grievance procedures as established by county council in those counties where the grievance procedures are operative, retaining all appellate rights provided for in the procedures. In those counties where a grievance procedure is not established....

(emphasis added). Since we already established above the Governor appoints election commissioners, then we know they are appointed “by an authority outside county government.” S.C. Code § 7-13-70. As employees in a department or agency under the direction of an official appointed “by an authority outside of county government,” the commissioners do not fall within the authority of personnel policies and procedures for county employees. *Id.* Even though the supervisory authority to hire and fire employees of the county election commission comes from the commissioners, this Office previously opined the County administrator had no authority over the employees of the County Board of Elections and Registration even though allocation and compensation of those employees came from the county. *See Op. S.C. Atty. Gen.*, 2005 WL 2652379 (October 11, 2005) (citing 1989 WL 406131 (April 6, 1989)). This Office also issued an opinion in 2007 which reaffirmed our opinion that county election commissioners have implied authority to hire and fire their employees. *Op. S.C. Atty. Gen.*, 2007 WL 3317619 (October 22, 2007) (citing *Op. S.C. Atty. Gen.*, 1989 WL 406131 (April 6, 1989)). Additionally, in regards of county allocation of funding positions by a county council, this Office previously opined:

... the Supreme Court in South Carolina has previously answered this question concerning a controversy between a supervisor and a county council concerning who had the right to hire and fire the county attorney. *Poore v. Gerrard*, 271 S.C. 1, 244 S.E.2d 510 (1978). In that case the Supreme Court held concerning S.C. Code § 4-9-430 “under [S.C. Code § ] 4-9-30(7) county council has the duty and responsibility to provide for personnel to operate the county functions over which it is granted control and to appropriate funds for the employment of such personnel. Section 4-9-420(12), dealing specifically with the county supervisor form of government, makes the county supervisor 'responsible for the employment and discharge of personnel subject to the provisions of subsection 7 of Section 4-9-30' and for which council has appropriated funds, i.e., county council is empowered to create and fund positions for the operation of county government, but personnel to fill such positions shall be appointed by the county supervisor. This conclusion is reinforced by further provisions of Section 4-9-430... such power to employee personnel [under S.C. Code § 4-9-420(12)] is limited, first, by the existence of a position to fill and, second, by the appropriation of funds with which to pay the employee.” *Id.* The supervisor has the power to hire and fire county personnel coming within the jurisdiction of county council, but that power is limited by county council creating a position and funding such a position.

*Op. S.C. Atty. Gen.*, 2013 WL 1695510. Please note this Office recognizes a long-standing rule that it will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law. *Ops. S.C. Atty. Gen.*, 2009 WL 959641 (March 4, 2009); 2006 WL 2849807 (September 29, 2006); 2005 WL 2250210 (September 8, 2005); 1986 WL 289899 (October 3, 1986); 1984 WL 249796 (April 9, 1984). Furthermore, “[t]he absence of any legislative amendment following the issuance of an opinion of the Attorney General strongly suggests that the views suppressed therein were consistent with the legislative intent.” *Op. S.C. Atty. Gen.*, 2005 WL 2250210 (September 8, 2005) (citing *Scheff v. Township of Maple Shade*, 149 N.J.Super. 448, 374 A.2d 43 (1977)). However, as stated below, this is

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only a legal opinion, and a court may construe the law otherwise. **Therefore, this Office will rely on the prior opinions to say that employees and staff of the Voter Registration and Election Commission may be considered county employees and those positions (and implicitly all benefits and coverage for those positions) would be funded by the county, even though the county does not retain jurisdiction to hire and fire them.**

In the past, this Office has issued prior opinions consistent with that interpretation. See Ops. S.C. Atty. Gen., 2011 WL 5304074 (October 21, 2011) (affirming that county veteran's affairs officers are officers of the county but not employees of the county subject to the county delegation who selected them and serve at the delegation's pleasure); 2011 WL 1740743 (April 29, 2011) (opining that county council has no authority concerning the employment or discharge of personnel employed by an elected official in that county); 2007 WL 419432 (January 8, 2007) (opining that a county council lacked the authority to terminate employees of an elected official and was dubious that the council would be permitted to reduce appropriations so as to indirectly terminate the position of such employees); 1993 WL 524252 (November 23, 1993) (opining that jail employees employed under an elected official were not entitled to county grievance rights); 1991 WL 633035 (August 8, 1991) (opining that employees of a county magistrate's office were county employees pursuant to S. C. Code § 22-8-30 but were hired and fired by the magistrate pursuant to S.C. Code § 4-9-30(7) without grievance rights, as the magistrate was an official appointed by an authority outside of county government); 1989 WL 508601 (October 26, 1989) (opining that the legislative intent of the 1988 amendment to S.C. Code § 4-9-30(7) was that an employee of the county magistrate was an employee of a public official appointed by an authority outside of the county government, and therefore was not entitled to a grievance hearing pursuant to S.C. Code § 4-9-30(7)).

**Conclusion:** Staff and employees of the Voters Registration and Election Commission may be considered county employees funded by the county even when the county itself, through its administrator or council, has no authority to hire or fire them. However, this Office is only issuing a legal opinion. Until a court or the legislature specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,



Anita Smith Fair  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General