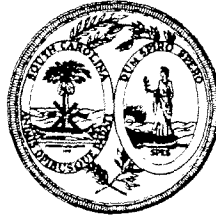


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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

December 14, 2000

The Honorable Harry C. Stille
Member, House of Representatives
9 Dogwood Drive
Due West, South Carolina 29639-0203

Dear Representative Stille:

By your letter of November 30, 2000, you have requested an opinion of this Office concerning the proper procedures for making a motion at a town council meeting in a mayor-council form of government. You have informed us that the municipality has enacted an ordinance allowing the mayor to make a motion while presiding at council meetings. Specifically you wish to know if this ordinance conflicts with the general law of South Carolina; in other words, is the mayor authorized to make a motion to the town council although he presides over the meeting?

The South Carolina Code of Laws provides fundamental authority for local governments to self-govern: Municipalities "may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State..." S.C. CODE ANN. § 5-7-30. With particular reference to council meetings, the general law also states: "The council shall determine its own rules and order of business and shall provide for keeping minutes of its proceedings which shall be a public record." S.C. CODE ANN. § 5-7-250.

In addition to the powers conferred upon municipalities, the authority vested in local officials depends on the form of municipal government. In the mayor-council form of government, the responsibilities and powers of the mayor are delineated in S.C. Code Ann. § 5-9-30. Among severally enumerated mandates, he is authorized to "preside at meetings of the council and vote as other councilmen." See S.C. CODE ANN. § 5-9-30(3).

As a general rule, an ordinance of a municipality will be presumed valid in the same way that a statute enacted by the General Assembly is entitled to a presumption of correctness. As this Office stated in an Opinion dated May 23, 1995:

[a]ny municipal ordinance adopted pursuant to Section 5-7-30 [of the Code] is presumed to be valid. Town of Scranton v. Willoughby, 306 S.C. 421, 412 S.E.2d 424 (1991). Within

*Respectfully,
Charlie Condon*

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the limits of a municipality, an ordinance has the same local force as does a statute. McCormick v. Cola. Elec. St. Ry. Light and Power Co., 855 S.C. 455, 675 S.E. 562 (1910). Any ordinance must be demonstrated to be unconstitutional beyond all reasonable doubt. Southern Bell Tel. and Tel. Co. v. City of Spartanburg, 285 S.C. 495, 331 S.E.2d 333 (1985).

See also Op. Atty. Gen. Dec. 21, 1998 (thoroughly discussing a municipal ordinance's presumption of validity after the enactment of the Home Rule amendments). Thus, an ordinance will not be declared invalid unless clearly inconsistent with the general law. See Hospitality Ass'n of S.C. v. County of Charleston, 320 S.C. 219, 224, 464 S.E.2d 113, 116 (1995). If either is silent where the other speaks, there is no conflict. See Wright v. Richland County Sch. Dist. Two, 326 S.C. 271, 486 S.E.2d 740 (1997).

Applying the foregoing rules of law, it is our opinion that the ordinance is consistent with the general law of South Carolina. Although the duties of the mayor in the mayor-council form of government do not expressly authorize the mayor to make a motion at a town council meeting, they neither expressly prohibit the mayor from so acting. Indeed, the General Assembly contemplated supplementing the authority of the mayor and other members of town council by authorizing the bodies to enact their own rules of order during meetings, pursuant to S.C. Code Ann. § 5-7-250. Thus, the responsibilities and powers of the mayor under S.C. Code Ann. § 5-9-30, at least for purposes of procedure, should not be read strictly to limit the actions of the mayor during a town meeting. We conclude, therefore, that the mayor may make a motion while presiding at a town council meeting if acting according to an ordinance which allows him to do so.

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 nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Susannah Cole
Assistant Attorney General