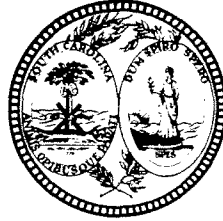


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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

April 7, 1997

James M. Robinson, Esquire
P.O. Box 738
Easley, South Carolina 29641-0738

Re: Informal Opinion

Dear Mr. Robinson:

Your opinion request has been forwarded to me for reply. You have informed this Office that the Combined Utility System of Easley, South Carolina (hereinafter "Combined Utility") is governed by a board of three elected commissioners. Presently, the commissioners do not receive a salary from the Utility, but do receive free utility service in lieu of salary. Apparently, the commissioners are considering a change in their method of compensation from the current practice to a salary. You ask whether the commissioners may change their compensation to salary and, if so, when such a change could be made.

In an opinion dated April 12, 1993, this Office examined the position of commissioner for the Combined Utility. This Office compared information provided on the Combined Utility to state statutes on municipal commissions of public works found in Chapter 31 of Title 5 and concluded that it was likely that the Combined Utility was established pursuant to this statutory scheme when it was formed in 1911. The present opinion will analyze your question under the assumption that the Combined Utility was created pursuant to Chapter 31 of Title 5.

Consideration of your questions must begin with reference to Section 8-15-10 of the Code, which provides as follows:

Except as otherwise provided or as prohibited by the Constitution of this State, the compensation of all officers and employees of the State or

Request Letter

Mr. Robinson
Page 2
April 7, 1997

any political subdivision, department or agency thereof shall be as from time to time provided by the General Assembly or the particular political subdivision, department or agency concerned, as the case may be.

A review of the State Constitution reveals only one provision of concern to this question: Article III, Section 30 would prohibit the payment of additional compensation to public officers, agents, employee, or the like after services have been rendered. To avoid difficulties relative to this constitutional prohibition, compensation or increases thereof should be undertaken prospectively. See Op. Atty. Gen. dated April 3, 1990. Other relevant provisions must be examined, as well.

The only statutory provision relative to payment of salary to commissioners of public works is apparently Section 5-31-220, which contains provisions for commissions of public works in cities of 50,000 or more inhabitants. That section provides in pertinent part, "[i]n such cities such commissioners of public works shall serve without compensation." In an opinion dated April 21, 1976, this Office concluded that a city could not provide salaries to a commission of public works established under Section 5-31-220. However, because the population of the City of Easley is less than 50,000 inhabitants, this Section 5-31-220 would not be applicable to the Combined Utility.

A well established rule of statutory construction is "expressio unius est exclusio alterius" which means that "the enumeration of particular things excludes the idea of something else not mentioned." Pennsylvania National Mutual Casualty Insurance Company v. Parker, 282 S.C. 546, 320 S.E.2d 458 (1984). Applying this rule of statutory construction to the statutes relative to the compensation of commissioners of public works, the fact that commissioners of public works in cities of 50,000 or more inhabitants are statutorily prohibited from receiving compensation implies that commissioners in cities of less than 50,000 inhabitants are allowed to be compensated. See Op. Atty. Gen. dated April 3, 1990.

Based on the foregoing, it is this Office's opinion that Section 8-15-10 of the Code would not prohibit the Combined Utility from establishing salaries for its members. However, because state ethics laws prohibit public officials from participating in governmental decisions that would affect their economic interests, I would encourage you to contact the State Ethics Commission for advice regarding application of the State Ethics Act to this situation.

In addition, no state statute establishes the effective date of such salary. It appears that the only limitation would be Article III, Section 30 of the State Constitution which mandates that such salary be prospective rather than after the services have been rendered.

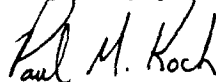
Mr. Robinson
Page 3
April 7, 1997

The foregoing discusses only the relevant statutory and constitutional provisions and reaches conclusions only as to questions of law. No comment is made as to any question of policy or any other factor which may be considered in determining whether to pay a salary; this opinion is not to be considered an endorsement of any particular salary or proposal which may be pending before or adopted by the Combined Utility.

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 questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch
Assistant Attorney General