

The State of South Carolina



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November 22, 1993

The Honorable Doug Smith
Member, House of Representatives
320A Blatt Building
Columbia, South Carolina 29211

Dear Representative Smith:

Your recent opinion request was referred to me for response. By your letter, you inquire:

Is it lawful for the Register of Me[sn]e Conveyance[s] of a county who is an elected official to dock an employee's pay for mistakes that employee makes without any sort of grievance or hearing process? Typically the RMC will dock the employee an hour's pay for a mistake made entering records into the computer system. Under what circumstances is this lawful?

To comply with Article VIII, §7 of the South Carolina Constitution, the General Assembly enacted Act No. 283, 1975 S.C. Acts 692 - 742 which established five alternate forms of county government.¹ Section 4-9-30(7) of Act No. 283, which was amended by Act No. 312, 1988 S.C. Acts 2527-2530, provides:

Under each of the alternate forms of government listed in §4-9-20, . . . , each county government within the authority granted by the

¹The South Carolina Supreme Court has held that the county board of commissioners form of county government provided as one of the alternate forms of county government was constitutionally impermissible. Duncan v. County of York, 262 S.C. 327, 228 S.E.2d 92 (1976).

Requid Lott

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Constitution and subject to the general laws of this State shall have the following enumerated powers which shall be exercised by the respective governing bodies thereof:

. . . ;
(7) to develop personnel system policies and procedures for employees by which all 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, a county employee discharged by the chief administrative officer or designated department head must be granted a public hearing before the entire county council if he submits a request in writing to the clerk of the county council within five days of receipt of notice of discharge. The hearing must be held within fifteen days of receipt of the request. The employee must be relieved of his duties pending the hearing and if a majority of the county council sustains the discharge, it is final subject to judicial review, but if a majority of the county council reverses the dismissal, the employee must be reinstated and paid a salary for the time he was suspended from his employment.

The salary of those officials elected by the people may be increased but may not be reduced during the terms for which they are elected, except that salaries for members of council and supervisors under the council-supervisor form of government must be set as provided in this chapter . . . [Emphasis added.]

S.C. Code Ann. §40-9-30(7) (1976 & 1992 Cum. Supp.). In addition, the General Assembly has enacted the County and Municipal Employees Grievance Procedure Act, S.C. Code Ann. §§8-17-110 through 8-17-160 (1976 & 1992 Cum. Supp.). The emphasized language in §4-9-30(7) above would appear to remove the employment and discharge of employees of a Register of Mesne Conveyances who is an elected

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official² from the provisions of §4-9-30(7) and, by construction, from the provisions of the County and Municipal Employees Grievance Procedure Act. See Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970) (Statutes in pari materia have to be construed together and reconciled, if possible, so as to render both operative.). These employees would appear to be subject to general personnel system policies and procedures of the county. See 1985 S.C. Att'y Gen. Op., No. 85-7 (Although S.C. Code Ann. §40-9-30(7) (1976 & 1992 Cum. Supp.) was amended since the issuance of that Opinion, that amendment does not appear to alter this analysis contained in that Opinion.).

Because you do not indicate what specific policies and procedures may have been adopted by the county or Register of Mesne Conveyances which are the subject of your inquiry, a definitive response is not possible here. Obviously, those specific policies and procedures, including perhaps the contents of any employee handbook,³ that may address the issue you raise would need to be considered for any definitive answer to your questions. The specific language used in the policies and procedures as well as their application would need to be reviewed to assess the lawfulness of the situation you describe.

I hope the above will be helpful to you. If I can answer any questions, please advise me.

Sincerely,



Samuel L. Wilkins
Special Assistant Attorney General

SLW/fg

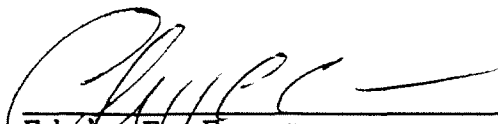
²Registers of mesne conveyances may be elected or appointed. S.C. Code Ann. §§30-5-10 & 30-5-12 (1976). The facts as you presented them are used in the analysis here.

³See Small v. Springs Industries, Inc., 292 S.C. 481, 357 S.E.2d 452 (1987); Epps v. Clarendon County, 304 S.C. 424, 405 S.E.2d 386 (1991); Marr v. City of Columbia, ___ S.C. ___, 416 S.E.2d 615 (1992) (all dealing with whether an employee handbook formed an employment contract).

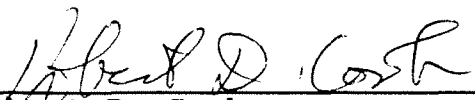
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