



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

December 6, 1995

The Honorable Elza S. Spradley
Mayor, Town of Batesburg-Leesville
358 Miller Street
Batesburg-Leesville, South Carolina 29006

RE: Informal Opinion

Dear Mayor Spradley:

By your letter of November 16, 1995, to Attorney General Condon, you have sought opinions as to various issues facing the Town of Batesburg-Leesville generally and you as Mayor specifically. Each of your questions will be addressed separately, as follows.

Question 1

As stated, you are Mayor of the Town of Batesburg-Leesville. The Town operates under the Council-Manager form of municipal government. S.C. Code Ann. §5-13-10 et seq. (1976). You indicate that there has been discussion of eliminating the mayor's power to run meetings, which you feel would drastically change the office and basically eliminate the position of mayor, making him or her just another member of council. You ask if this can be done and, if so, how must it be done.

Several statutes require consideration to respond to your question. A general statute applicable to all municipalities, regardless of the form of government under which they operate, is S.C. Code Ann. §5-7-250. In subsection (b), it is provided that "[t]he council shall determine its own rules and order of business... ." The statutes which set forth the specific powers, duties, responsibilities, and so forth of the individual forms of municipal government are also instructive for what they provide and for what they fail to provide, as well. As to the mayor-council form of government (commonly called the "strong

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mayor" form of government), §5-9-30(3) provides as to the mayor's powers and duties under that form of government that the mayor is "to preside at meetings of the council and vote as other councilmen[.]" As to the council form of government, §5-11-30 vests all legislative and administrative powers of the municipality and determinations of matters of policy in the council as a whole; the statute provides that "[e]ach member of council, including the mayor, shall have one vote." The statutes as to the council form of government are silent as to who the presiding officer must be. As to the council-manager form of government, the form under which the Town of Batesburg-Leesville operates, §5-13-30 vests all legislative powers and the determination of matters of policy in the municipal council; each member of council, including the mayor, is to have one vote. As with the council form of government, statutes relative to the council-manager form of government are silent as to the presiding officer.

I have located two previously rendered opinions of this Office (both rendered before the adoption of the Home Rule Act by the General Assembly) which mention the powers of the mayor. One opinion dated February 18, 1975, dealt with the powers of the mayor of the Town of Batesburg, which town at the time was apparently operating under the mayor-council form of government. See Miller v. Town of Batesburg, 273 S.C. 434, 257 S.E.2d 159 (1979). As to the powers of the mayor at that time in that town, former Attorney General McLeod opined:

[I]t appears to me from looking at the statutes hurriedly that it is just as in nearly every other town not under the council-manager form of government that the power to run the town is vested in the town council as a body and that the mayor really sits as a presiding officer. [Emphasis added.]

In an opinion dated February 14, 1967, to the mayor of the City of Lake City, former Attorney General McLeod advised that "[t]here is no specific statutory provision relating to the authority and responsibility of mayors generally." The opinion also stated:

The mayor acts as presiding officer of the city council but this is not the subject of statutory provision. Specific parliamentary procedure may be devised by the city and incorporated in its ordinances.

The answer to your specific inquiry is that there are relatively few instances where the duty, responsibility and authority of the mayor of a municipality is specifically spelled out in the statute. In general, it may be said that he is the chief officer of the city[.] [Emphasis added.]

Copies of these opinions are enclosed herewith.

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A well-established rule of statutory construction is also helpful in responding to your question; that rule is "expressio unius est exclusio alterius," or, "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, 554, 320 S.E.2d 458, 463 (1984). Applying that rule of statutory construction to the statutes relative to the specific forms of municipal government, it may be argued that specific provision for the mayor in the mayor-council form of government to be the presiding officer excludes other members of the council in that form of government from being the presiding officer.¹ On the other hand, the other two forms of municipal government do not specifically call for the mayor to be the presiding officer, so that application of the rule of statutory construction in this instance would indicate that any member of council could be the presiding officer.

The same conclusion has been reached in other resources which discuss the role of the presiding officer of a municipality. In 56 Am.Jur.2d Municipal Corporations, etc. §165, it is stated: "In the absence of a statutory provision that the mayor shall preside at meetings of the municipal council, the council elects its own presiding officer." Similarly, in a leading treatise on municipal law, the following is stated: "Whether the mayor shall be the presiding officer, or shall be regarded as a member, depends upon the proper construction of the charter, or the law under which the [municipal] corporation is organized." 4 McQuillin, Municipal Corporations, §13.19.

Therefore, in response to your first question, I am of the opinion that in the council-manager form of municipal government, the mayor is not required by statute to be the presiding officer of the council. Section 5-7-250(b) authorizes municipal councils to establish their own rules, and I am of the opinion that selection of the presiding officer under the council-manager form of government could be within those rules.

Question 2

Your second question is whether the volunteer firefighters of the Town of Batesburg-Leesville would be considered employees of the Town. You also ask whether you could remain a member of the volunteer fire department without endangering your position as mayor. You had attached to your letter an article from a magazine which seemed to conclude that for purposes of the federal Fair Labor Standards Act, volunteers

¹Of course, an exception would be made where the mayor pro tempore should be presiding in the absence or disability of the mayor, pursuant to S.C. Code Ann. §5-7-190 (which is a general statute applicable to all forms of municipal government).

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do not lose their status as volunteers if they are provided reasonable benefits that may involve group insurance benefits, and further that the federal Act is not violated if volunteers receive some compensation on a monthly basis for such expenses as shoes, belts, travel, meals, and the like.

Enclosed is a copy of an opinion rendered on December 6, 1995, to the attorney for the Town of Batesburg-Leesville. You will see therein that I concluded that volunteer firemen of the Town would be considered employees of the Town, for the reasons stated therein. Whether the firemen might be considered volunteers rather than employees for purposes of the Fair Labor Standards Act, in my view, would not be determinative for purposes of the Code sections cited in the opinion.

Also addressed in the above-referenced opinion were several statutes which preclude a mayor or member of council from holding other municipal offices or employment while serving the term for which he was elected, as well as a statute which indicates that violation of an express prohibition in Chapters 1 to 17 of Title 5, Code of Laws, would cause a mayor or member of council to forfeit his office. Based on these statutes as explained more fully in the above-referenced opinion, I am of the opinion that concurrently serving as a mayor and a volunteer fireman in the municipality at the same time could cause the office of mayor to be forfeited in accordance with the statute.

Question 3

Your third question is, assuming that you could be a member of the fire department without endangering your position as mayor, whether you could hold an office within the fire department. Because, as indicated above, your position as mayor would be endangered by serving as a volunteer fireman, it is unnecessary to respond to this question.

Question 4

Your final question is: if you may be a member of the fire department, hold an office within the fire department and remain mayor, would there be any problems with your voting on issues dealing with the fire department that come before council or asserting your opinions at such meetings? Because the responses to questions 2 and 3 were not affirmative, it is not necessary to address this question. I would add, however, that the issues which you have raised with respect to this final question would come under the Ethics, Government Accountability, and Campaign Reform Act of 1991; questions which come within that Act are more appropriately resolved by the State Ethics Commission.

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This letter is an informal opinion only. It has been written by a designated Senior 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 am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General

Enclosures