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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

April 8, 1996

J. Martin Harvey, Esquire
Allendale Town Attorney
Post Office Box 1005
Barnwell, South Carolina 29812

RE: Informal Opinion

Dear Mr. Harvey:

By your letter of March 4, 1996, to Attorney General Condon, you have sought an opinion as to whether S.C. Code Ann. §5-7-170 (1995 Cum. Supp.) would be satisfied by the adoption of a budget ordinance which includes salary increases for the mayor and members of the Town Council of the Town of Allendale. Put another way, you have asked whether a separate ordinance must be adopted specifically to address mayor and council salaries prior to a salary increase being implemented.

Section 5-7-170 provides as follows:

> The council may determine the annual salary of its members by ordinance; provided, that an ordinance establishing or increasing such salaries shall not become effective until the commencement date of the terms of two or more members elected at the next general election following the adoption of the ordinance, at which time it will become effective for all members whether or not they were elected at such election. The mayor and council members may also receive payment for actual expenses incurred in the performance of their official duties within limitations prescribed by ordinance.

You have advised that on June 27, 1995, the Town Council of the Town of Allendale adopted by ordinance its Fiscal Year 1996 Budget which incorporated a slight

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Request Letter

increase in salaries to be paid to the Mayor ($3,000.00 a year) and Council members ($2,400.00 a year each). In keeping with §5-7-170, the salaries are to become effective only after the municipal elections scheduled for April 2, 1996. Thus the question arises: was the salary increase as adopted in the budget ordinance sufficient, or must a separate ordinance be adopted?

Section 5-7-170 requires that the salary of mayors and members of a council be set by ordinance; the statute is silent as to whether such must be accomplished by a separate ordinance, or whether such may be incorporated with some other ordinance (such as a budget ordinance). Section 5-7-260 lists those acts of a municipal council which are required to be done by ordinance, the list being in addition to those acts which are required by other laws to be accomplished by ordinance; §5-7-260 does not give any additional guidance as to the ordinance relative to salary increases, however. Section 5-7-250(b) of the Code states in part that "[t]he council shall determine its own rules... ." The procedure or form for adoption of an ordinance increasing salaries may well be left to the determination of council, since no procedure is prescribed outside the requirement that such be accomplished by ordinance.

By way of analogy, I would advise that the General Assembly adopts an annual appropriations act detailing the expected revenues and expenditures of the State of South Carolina for the next succeeding fiscal year. The act is generally divided into two parts, one for the upcoming fiscal year, the provisions of which will ordinarily lapse on June 30 of that fiscal year, and a second part detailing permanent provisions of law which will not lapse at the end of that fiscal year. Using the annual state appropriations act for guidance, it is possible to combine temporary and permanent provisions in a single legislative act. Care should probably be taken to specify the effective dates of each type of provision and the continuing nature of the provisions which will not lapse at the end of the fiscal year.

In conclusion, I would advise that the statutes relative to adoption of ordinances by a municipal governing body do not contain specific guidance as to how an ordinance increasing salaries of the mayor and council members should be adopted. It thus appears that the municipal council may determine, in accordance with §5-7-250, an appropriate manner in which to adopt such an ordinance.

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