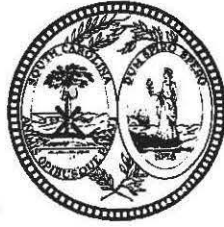


6055 February



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

October 22, 1996

The Honorable B. Keith Turner
Coroner, Saluda County
Route 4, Box 242
Saluda, South Carolina 29138

Re: Informal Opinion

Dear Coroner Turner:

You state that the Saluda County Council has classified your elected position as coroner as a part-time position. You indicate that as coroner, you are "on call" 7 days a week, 24 hours a day, 365 days a year. Further, you note that you

have been the Saluda County Coroner since January 1, 1993, and just recently realized that my position was classified as part time. On January 1, 1996, Saluda County employees were given a 3% longevity pay increase while elected and appointed officials were eliminated from this increase. Saluda County Council then decided on July 1, 1996 to include the elected and appointed officials in the three percent increase. When I received my salary check, the 3% increase was not reflected. I asked Council about the absence of this increase and was informed at that time, I was considered part time for salary purposes.

In your opinion, is it legal for me as an elected official to be singled out as a part time officer for pay increases?

Article V, Section 24 of the South Carolina Constitution provides that

[t]here shall be elected in each county by the electors thereof a clerk of the circuit court, a sheriff, and a coroner All of these officers shall serve for terms of four years and until their successors are elected and qualify. The General Assembly shall provide by law of their duties and compensation (emphasis added).

The statutory authority of coroners is set forth at S.C. Code Ann. Sec. 17-5-10 et seq.

A coroner in South Carolina is deemed an officer of the county. Op. Atty. Gen., Op. No. 83-83 (November 2, 1983). The coroner's salary and other benefits are generally paid by the county. Op. Atty. Gen., October 6, 1986.

Thus, we must turn to the county "Home Rule" legislation for guidance in this area. Section 4-9-30 (7) authorizes county councils in pertinent part

to develop personnel system policies and procedures for county employees by which all county employees are regulated except those elected directly by the people

Such Section also contains the following language:

[t]he salary of those officials elected by the people may be increased but shall not be reduced during the terms for which they are elected, except that salary for members of council and supervisors under the council-supervisor form of government shall be set as hereinafter provided

Interpreting the various provisions of the Home Rule legislation, this Office has consistently advised that a county governing body and its officials possess little authority over county elected officials. A prior opinion, dated July 13, 1988 stated that, with respect to a county with a county-administrator form of government, "it is clear that the administrator possesses very limited authority regarding ... (a county officer)" A March 15, 1990 opinion concluded that "[t]he Home Rule Act evidences that a county governing body is without authority to alter or modify the duties of an elected official when the same are imposed by general law." In Op. 92-47 (August 31, 1992), we found these same principles applicable to the county coroner.

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I do not think there is any dispute that the coroner, as an elected official, remains available for duty and "on call" at all times. As you indicate, it is not mandated by statute that a coroner must work a set number of hours or at a particular time. The coroner performs his duties when necessity requires it, regardless of what time it is, day or night. Thus, in that sense, a coroner is not deemed "part-time".

However, regardless of the designation by the county as "part-time", the County Council is not mandated to provide a raise in salary to a coroner. While it is expressly permitted by Section 4-9-30 (7) that "the salary of those official elected by the people may be increased during the term of office, such is not required. Section 4-9-30 (7)'s only limitation is that elected official's salaries "shall not be reduced during the terms for which they are elected" Thus, unless your salary has been "reduced" during your term, Section 4-9-30 (7) does not impose any duty upon Council with respect to your salary and compensation. It goes without saying that the decision to spend money by a county council involves considerable discretion. See, State ex rel. Snyder v. State Controlling Bd., 464 N.E.2d 617 (Ohio 1983).

An Opinion by the Arkansas Attorney General, while, of course, not binding on this Office is instructive because it analyzes precisely the same situation. There, the local governing body declared the position of coroner to be part-time and thus certain fringe benefits available to the coroner. The coroner stated that he was "on call" twenty-four hours a day, seven days a week. The Attorney General of Arkansas, in responding to the inquiry of whether the county governing body's actions were valid, stated:

[i]t is my opinion that there is no requirement that this be classified as a full-time position. Assuming that the county's obligation to provide all required services is not altered and that there is no resultant decrease in salary or compensation during a current term, it is my opinion that the county may, as a general matter declare the position of coroner to be part-time. This also assumes that there is a rational basis for the classification. A constitutional challenge may, otherwise, ensue.

Based upon the foregoing, it would appear that so long as there has been no decrease in the coroner's salary during his term, a county council is permitted, in its discretion, but is not obligated to, provide an elected official with a salary increase. Thus, such decision is a matter for County Council to make. Like the Attorney General of Arkansas, however, I presume that the County Council has a rational basis for singling the coroner out from other elected officials to deny a salary increase.

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This letter is an informal opinion only. It has been written by a designated Assistant Deputy 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 kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/ph