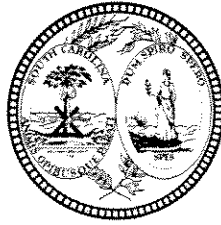


OS-6018
February



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

September 27, 1996

The Honorable William L. Otis, Jr.
Member, Town Council of Pawley's Island
P. O. Box 1350
Pawley's Island, South Carolina 29585

Re: Informal Opinion

Dear Mr. Otis:

You are writing as a member of Pawley's Island town council. You note that Pawley's Island has been a town for ten years and has a "strong mayor" form of government. You state that the Council hired Mr. Reese Daniel as the Town Attorney at the first meeting after incorporation, a position he has held since. Furthermore, you state:

[f]or the past several years a Mr. George Kosko has been involved with a member of issues regarding town government without his status being made clear to the council. Mr. Kosko recently submitted a bill for over \$50,000 to the town for the services rendered. The Mayor has informed the council that he hired Mr. Kosko to represent the town. The Mayor contends he has the authority, several members of council question that he does.

The mayor-council form of government ("strong mayor") is set forth in S.C. Code Ann. Sec. 5-9-10 et seq. Pursuant thereto, Section 5-9-30 provides in pertinent part that

[t]he mayor shall be the chief administrative officer of the municipality. He shall be responsible to the council for the administration of all city affairs placed in his charge by or

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under Chapters 1 through 17. He shall have the following powers and duties:

- (1) to appoint and, when he deems it necessary for the good of the municipality, suspend or remove all municipal employees and appointive administrative officers provided for by or under Chapters 1 through 17, except as otherwise provided by law, or personnel rules adopted pursuant to Chapters 1 through 17. (emphasis added).

We have previously opined that, pursuant to the underlined language of the foregoing provision, "if an appointive office is provided for by statute, the appointment of the official who occupies that office must be made pursuant thereto." Op. Atty. Gen., December 17, 1976.

Section 5-7-230 provides for the appointment of a municipal attorney. That Section in pertinent part states:

[t]he city council may elect or appoint a municipal attorney ... whose duties shall be as prescribed by law.

This Office has previously opined with respect to the selection of a town attorney as follows:

[i]n response to your request for an opinion as to whether the mayor or the municipal council has the authority to elect or appoint a municipal ... attorney under the mayor-council form of government, my opinion is that the municipal council is so authorized pursuant to Section 47-52 [5-7-230], CODE OF LAWS OF SOUTH CAROLINA, 1962, (Cum. Supp.). The provisions of that Code section apply to all municipalities regardless of which of the three forms of municipal government they might select and, in fact, Article 3 of Title 47, Chapter 1, of which Section 47-52 [5-7-230] is a part, is entitled "General Structure, Organization, Powers, Duties, Functions and Responsibilities of all Municipalities." Moreover, the authority granted by Section 47-62(1) of the Code [Section 5-9-30] to the mayor in the mayor-council form of municipal government to appoint all municipal employees

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and appointive administrative officers is limited to those whose employment or appointment is not otherwise provided by law. In my opinion, the provisions of Section 47-52 are of the type intended by the 'except as otherwise provided by law' language of Section 47-62(1) [Section 5-7-30]

Op. Atty. Gen. No. 77-6, (January 6, 1977).

We have also previously noted that "[i]n certain extenuating circumstances", there is "... the implied authority of a [local government] ... board or officer to hire counsel in the good faith prosecution or defense of an action taken in the public interest and in conjunction with its or his official duties where the ... [local government's] attorney refuses to act or is incapable of or is disqualified from acting.'" Op. Atty. Gen., February 15, 1985.

Of course, this Office has no ability to make factual determinations in an opinion. Op. Atty. Gen., December 12, 1983. Accordingly, I am in no position to determine whether there are special or unique circumstances such as a conflict of interest, special expertise etc. Thus, I am able only to provide you with the general authorities set forth above. Enclosed are copies of Op. No. 77-6, and the February 15, 1985 opinion.

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/an
Enclosures