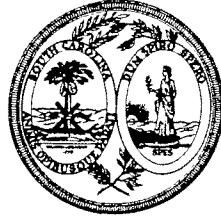


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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

June 24, 1997

The Honorable T. Scott Beck  
Member, House of Representatives  
22 Rapids Court  
North Augusta, South Carolina 29841

Dear Representative Beck:

Attorney General Condon has forwarded your recent opinion request to me for reply. You have informed this Office that you have received an inquiry concerning the constitutionality of an Aiken County ordinance which sets the salary of each council member at 60% of a State Legislator's salary. According to your request, Aiken County is currently using the Legislator's base salary for the computation of a council member's salary. However, there has been a suggestion that a Legislator's in-district expense money should be considered as part of a Legislator's salary and thus included in the computation of a council member's salary. In light of the foregoing, you ask for this Office's opinion on two questions. First, is it constitutional for a county to set its council members' salaries as a percentage of a State Legislator's salary? Secondly, if the practice is constitutional, what components of the Legislator's compensation should be considered salary for use in computing the council member's salary?

County Council's ability to adjust their salary is guided by Section 4-9-100 of the South Carolina Code. This Section provides in pertinent part:

... After the initial determination of salary, council may by ordinance adjust the salary but the ordinance changing the salary is not effective until the date of commencement of terms of at least two members of council elected at the next general election following the enactment of the ordinance affecting the salary changes at which time it will become effective for all members...

It is my understanding that the Aiken County Council passed an Ordinance in 1983, amended in 1987, setting forth the compensation for its members. Section 2-24(a) of the

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Aiken County Code provides that: "[t]he compensation paid to members of the county council shall be sixty (60) percent of the amount paid to members of the South Carolina General Assembly, excluding per diem."

Your first question is whether it is constitutional for a county to set its council member's salaries as a percentage of a State Legislator's salary. To answer this question, the focus must be on whether it is constitutional for the county council to delegate its power to set the compensation of its members to a third party, in the instance, the General Assembly.

As a general rule, the legislative body (in this case, the County Council) may not abdicate its essential power to legislate or delegate that power to any other department or body. See South Carolina State Highway Department v. Harbin, 226 S.C. 585, 86 S.E.2d 466 (1955); Schryver v. Schirmer, 171 N.W.2d 634 (S.D. 1969). Further, a statute which in effect reposes an absolute, unregulated, and undefined discretion in another body bestows arbitrary powers and is an unlawful delegation of legislative powers. See South Carolina State Highway Department v. Harbin, *supra*. In certain instances, the legislative body may authorize another agency to "fill up the details" by prescribing rules and regulations for complete operation and enforcement of the law within its expressed general purpose. *Id.* However, it is necessary that the statute declare a legislative policy, establish primary standards for carrying it out, or lay down an intelligible principle to which the other body must conform, with a proper regard for the protection of the public interests and with such degree of certainty as the nature of the case permits, and enjoin a procedure under which, by appeal or otherwise, both public interests and private rights shall have due consideration. *Id.* Additionally, as a general rule, statutes adopting future laws, rules or regulations of other governmental bodies are unconstitutional as an unlawful delegation of legislative powers. Schryver v. Schirmer, *supra* (citing authority).

Based on the foregoing, in my opinion, the ordinance is constitutionally troubling in two respects. First, the ordinance appears to unlawfully delegate the Aiken County Council's power to set the salaries of its members to the General Assembly without setting forth any standards for carrying out the ordinance. See South Carolina State Highway Department v. Harbin, *supra*; State v. Watkins, 259 S.C. 185, 191 S.E.2d 135 (1972). Second, the Ordinance appears to be an unconstitutional delegation of legislative power because it bases the salary of members of the Aiken County Council on the adoption of future laws by the General Assembly. Schryver v. Schirmer, *supra*.

In addition to the likelihood of the ordinance being unconstitutional as an unlawful delegation of legislative power, the ordinance may also be violative of Article VIII, Section 7 of the South Carolina Constitution which forbids the General Assembly

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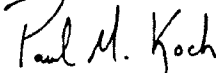
from enacting a law for a specific county. Clearly, it would be unconstitutional under Article VIII, Section 7 for the General Assembly to enact special legislation addressing only the salary of members of the Aiken County Council. In this case, while this is not a law for a specific county in the usual sense, when the General Assembly increases the pay of its members, they are in essence increasing the pay of members of the Aiken County Council. Thus, the potential does exist that a court may find that the setting of salaries of members of the Aiken County Council as provided in the ordinance would come as a result of special legislation.

Your second question is if the ordinance is constitutional, what components of the Legislator's compensation should be considered salary for use in computing the council member's salary. Based on the wording of your question, since it is my opinion that the ordinance is of doubtful constitutionality, I will not address this question.

In conclusion, in my opinion, the ordinance is constitutionally troubling. While no court has squarely addressed the question, I am concerned that a taxpayer could attack the ordinance on constitutional grounds based on the foregoing arguments. In view of the fact that the General Assembly has authorized county councils, to the exclusion of other bodies, to determine the salary of its members, the tying of those salaries back to actions by the General Assembly is suspect because it abdicates a legislative function to another governmental entity. In effect, the ordinance allows the General Assembly to set the salaries of members of the Aiken County Council by other than general law. For these reasons, I have serious doubts about the constitutionality of this ordinance.

With kindest regards, I remain

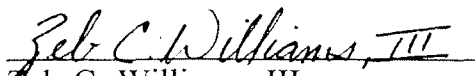
Very truly yours,



Paul M. Koch

Assistant Attorney General

REVIEWED AND APPROVED BY:



Zeb C. Williams, III

Deputy Attorney General