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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

October 24, 1997

The Honorable Herbert Kirsh  
Member, House of Representatives  
Box 31  
Clover, South Carolina 29710

Re: Informal Opinion

Dear Representative Kirsh:

Attorney General Condon has forwarded your opinion request to me for reply. You have enclosed a letter from one of your constituents which asks for this Office's opinion on two issues concerning the City of York.

The first question raised by your constituent concerns the manner in which a city council may appropriate money from the city's fund balance. Your constituent states that the York City Council, by simple motion, allocated money from the City's fund balance to the budget revenues of the 1995-96 budget.

Article X, § 8 of the State Constitution requires that monies be withdrawn from the treasury of a political subdivision based only on appropriations made by law. This Office has previously concluded that appropriations may only be made pursuant to an authorization which carries the force of law. Op. Atty. Gen. dated August 9, 1973. When it is specified, for example, that action must be taken "by law," usually a resolution will not suffice. Sutherland Stat. Const. § 29.01; Op. Atty. Gen. dated June 17, 1987. Therefore, if a city council appropriates money, this should be done by an authorization which carries the force of law such as an ordinance. This conclusion is supported by the language of Section 5-7-260 of the South Carolina Code of Laws which requires that a municipal council adopt a budget by ordinance.

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The second question raised by your constituent is based on Section 2-77 of the York City Code. This section provides that the city manager shall have the power and shall be required to:

- (2) At least sixty (60) days prior to the beginning of the fiscal year, prepare and submit a budget estimate which he shall transmit to council ...<sup>1</sup>

Your constituent first asks whether the sixty days refers to the date the proposed budget is to be submitted to council or does it refer to the date the city manager should start working on the budget. Next, if the sixty days refers to the date that the proposed budget is to be submitted to council, your constituent asks by what authority does council have to grant an extension of time and if an extension is granted, is this a violation of the law.

Section 5-9-10 et seq. of the South Carolina Code of Laws sets forth the legal framework for the Council-Manager form of government. The responsibilities of a city manager are found in Section 5-13-90. One of the responsibilities of the city manager is to prepare the budget annually and submit it to the municipal council. Section 5-13-90(2). However, this statute does not set forth a specific time in which the city manager is required to prepare and submit the budget. Therefore, in this case, it must be assumed that at some point a previous York City Council, apparently acting under its authority to determine its own rules within the framework of State law, determined that it needed to place a time guideline on the preparation and submission of the budget estimate by the city manager.

An act, ordinance, or rule, once adopted, is not necessarily binding upon future legislative bodies, which bodies are free to amend or modify previous actions taken. See Manigault v. Springs, 199 U.S. 473, 50 L.Ed.2d 274 (1905); Op. Atty. gen. dated March 31, 1988. This is particularly true where, as here, such requirement relates to a time limit established by a prior council regarding submission of an item to future councils.

In Manigault, a statute required the South Carolina legislature to follow certain procedures, including the necessity of a petition, prior to enacting private legislation. A subsequent legislature refused to follow the statutory procedure in enacting such legislation. The Supreme Court deemed the statutory procedure as having been amended by a subsequent legislature. The Court concluded:

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<sup>1</sup> I have been informed that this Section of the York City Code has since been amended so as to change the time period from sixty days to forty-five days.

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This law was doubtless intended as a guide to persons desiring to petition the legislature for special privileges, and it would be a good answer to any petition for the granting of such privileges that the required notice had not been given; but it is not binding upon any subsequent legislature, nor does the noncompliance with it impair or nullify the provisions of an act passed without the requirement of such notice. (Emphasis added.)

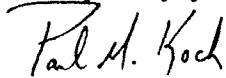
199 U.S. at 487.

In this case, a previous city council determined that at least sixty days prior to the beginning of the fiscal year, the city manager shall prepare a budget estimate which he shall transmit to council. In my opinion, if a court were to examine this issue, it would likely conclude that a sitting council would not be bound by time restraints placed on it by the ordinance passed by a prior council and would be capable of determining the time in which the city manager should prepare and submit the budget estimate to the sitting council.

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

Very truly yours,



Paul M. Koch

Assistant Attorney General