

The State of South Carolina

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Office of the Attorney General

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July 2, 1990

The Honorable Roland S. Corning
Member, House of Representatives
Post Office Box 2805
Columbia, South Carolina 29202

Dear Representative Corning:

By your letter of June 26, 1990, you have requested the opinion of this Office as to whether a county council by majority vote may by ordinance prohibit an individual member of county council from requesting an opinion related to county business from the county attorney's office. You enclosed a copy of an ordinance apparently pending before Richland County Council in this regard.

No statute in the South Carolina Code of Laws specifically governs the employment of a county attorney or the prescription of his duties. A county governing body is generally authorized to establish whatever positions in the county it deems necessary and proper, to prescribe the functions thereof, and to regulate, modify, merge, or abolish such positions, by Section 4-9-30(6) of the Code. Thus, a county council has a great deal of discretion in this regard generally. 1/

1/ This opinion does not take into account any county ordinance pertaining to the county attorney which may have been previously adopted by Richland County Council. An opinion of this Office dated May 5, 1981 (concluding that the Richland County Attorney is a public officer) mentions provisions adopted by Richland County Council respecting the Richland County Attorney, however.

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In addition, Section 4-9-110 of the Code provides that a county council "shall determine its own rules and order of business." The proposed ordinance could be viewed as a rule of county council, effectively establishing a rule or procedure by which the county attorney will advise council or its committees, by virtue of Section 4-9-110, instead of being viewed merely as a limitation on the duties of the county attorney.

As a practical matter, we call to your attention this Office's policy on responding to opinion requests from local governments; a copy of the policy is enclosed. Because a local governmental entity may take actions or make decisions only as an entity, Op. Atty. Gen. dated September 6, 1984, our policy is to work with the entity as a whole rather than with the individual members, hence the requirement that a majority of the governing body vote affirmatively to request an opinion. While we do not know the reasoning behind the proposed ordinance, we know that Richland County Council is aware of this Office's policy; perhaps our policy has served as a model for the proposed ordinance.

For the foregoing reasons, it is the opinion of this Office that a county council could adopt an ordinance requiring that opinion requests to be submitted to the county attorney, pertaining to county business, only upon majority vote of council or the appropriate committee rather than from an individual council member.

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

Enclosure

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions