

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3970
FACSIMILE: 803-253-6283

June 18, 1991

A. Arthur Rosenblum, Esquire
Charleston County Attorney
Post Office Box 777
Charleston, South Carolina 29402

Dear Mr. Rosenblum:

On behalf of Charleston County Council, you have asked for the opinion of this Office on two questions involving compensation to a county officer and county employees. Each question will be addressed separately, as follows.

Question 1

You have first asked about providing merit pay to county employees on a one-time basis, under a program entitled EXCEL, or Excellent County Employees With Longevity. A copy of the proposed program was forwarded to our Office, as well as correspondence between the County Attorneys and the county personnel department. You had concluded that such payments would be improper under Article III, § 30 of the State Constitution and S.C. Code Ann. § 4-11-170 (1986).

This Office concurs with the conclusion reached by the County Attorneys, based on opinions previously rendered by this Office as to bonus pay made on a retroactive basis (after services have been rendered). See Ops. Atty. Gen. dated April 3, 1989 and May 1, 1989 (both construing § 4-11-170); October 10, 1985; July 19, 1979; July 14, 1958; February 25, 1955; January 27, 1977; July 26, 1978; August 23, 1979; and September 29, 1981, in which we have repeatedly concluded that bonus pay (or such pay as amounts to bonus pay) is prohibited as being made after services have been rendered or a contract fulfilled.

Mr. Rosenblum
Page 2
June 18, 1991

Question 2

Your second question is whether a salary increase may be implemented in the 1991-92 budget, to be retroactive to January 1, 1991, for the Charleston County Sheriff. Your office has opined that such would be a violation of § 4-11-170 as well as Article III, § 30 of the State Constitution, opinions of the state Supreme Court, and numerous opinions of the Attorney General. We have also received input from the sheriff relative to the issue.

As is noted in State ex rel. McLeod v. McLeod 270 S.C. 557, 243 S.E.2d 446 (1978), "'Extra compensation' within the meaning of a constitutional prohibition such as Article III Section 30 is generally defined as any compensation over and above that fixed by law or contract at the time the service was rendered." 270 S.C. at 559 (emphasis added). Even though Article III, § 30 by its terms prohibits only action by the General Assembly, this Office has concluded that this constitutional provision also serves to limit political subdivisions, such as counties, at least in the powers delegated to them by the legislature. Ops. Atty. Gen. dated April 3, 1989; July 19, 1979. Additionally, however, § 4-11-170 is a specific prohibition against the county council granting, and the county treasurer paying, extra allowance (compensation, in whatever form) to any person paid by salary. See also Op. Atty. Gen. dated May 1, 1989 ("paid by salary" includes employees paid pursuant to contract). See also the numerous opinions referenced above, as well as the cases referenced in your letter.

Based on our numerous prior opinions and the reasoning contained therein, we agree with your conclusion, as County Attorney, that a retroactive salary increase, created after services have been rendered, would be prohibited by § 4-11-170 and Article III, § 30. 1/

1/ Certainly, a prospective salary increase would be permissible. Whether or not, in a given instance, an increase was granted or intended prior to services being rendered is a factual issue and thus beyond the scope of an opinion of this Office. Op. Atty. Gen. dated December 12, 1983.

Mr. Rosenblum
Page 3
June 18, 1991

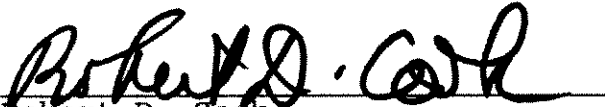
With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:


Robert D. Cook
Executive Assistant for Opinions

cc: The Honorable Al Cannon
Sheriff of Charleston County