

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

May 7, 1991

Melvin B. McKeown, Esquire
York County Attorney
Post Office Drawer 299
York, South Carolina 29745

Dear Mr. McKeown:

By your letter of April 8, 1991, you have requested the opinion of our Office as to the legal authority of the York County Manager to discharge the appointed York County Treasurer under the council-manager form of government where the York County Council has adopted an ordinance providing for the appointment of the county treasurer.

Home Rule Considerations

As you note in your letter, § 4-9-60, S.C. Code Ann. (1986) provides in pertinent part as to county treasurers and auditors in the council-manager form of government: "Under the council-manager form the county treasurer and county auditor shall serve out their unexpired terms but shall thereafter be elected or appointed as council shall by ordinance prescribe." Specifically as to the council-manager form of government, the auditor and treasurer are addressed by § 4-9-860:

The county treasurer and county auditor, or their counterparts, by whatever terms those officials are designated may be elected or appointed by council as the council may determine by ordinance. If such officials are appointed, they shall be subject to control by council and the manager in the same manner as other appointed county department heads.

The manager in the council-manager form of government is declared by § 4-9-820 to be the "administrative head of the county government" and is to be responsible "for the administration of all

Mr. McKeown
Page 2
May 7, 1991

the departments of the county government which the council has the authority to control." His powers and duties are listed in § 4-9-830 and include, among others:

- (1) to serve as the chief administrative officer of the county government;
- (2) to execute the policies, directives and legislative actions of the council;
-
- (7) to be responsible for the administration of county personnel policies including salary and classification plans approved by council;
- (8) to be responsible for employment and discharge of personnel subject to the provisions of subsection (7) of § 4-9-30....

Authority of the county manager over county employees is further reinforced by § 4-9-850, which provides in relevant part: "Except for the purposes of inquiries and investigations, neither the council nor its members shall give orders or instructions to county officers or employees."

As you have further noted, § 4-9-30(7) authorizes a county council to adopt personnel policies and procedures "for county employees by which all county employees are regulated except those elected directly by the people, and to be responsible for the employment and discharge of county personnel in those county departments in which the employment authority is vested in the county government." You have further advised that, as authorized by §§ 4-9-30(7) and 8-17-110 et seq., York County Council has adopted grievance procedures which are operative.

York County Ordinances

By Ordinance No. 37, adopted March 19, 1979, and now codified as § 8-1 of the York County Code, York County Council provided for appointment of the York County Treasurer:

The county auditor and the county treasurer, or their counterparts, by whatever terms these officials are designated, shall be appointed by the county council for indeterminate terms of

Mr. McKeown
Page 3
May 7, 1991

office. The county auditor and the county treasurer, after appointment, shall be subject to control by the county council and the county manager in the same manner as other appointed county department heads, as provided by § 4-9-860 of the Code of Laws of South Carolina, 1976.

Both the ordinance and § 4-9-860 seem to place the appointed treasurer on the same footing as department heads, who would be county employees.

You advised too that a portion of the county grievance procedure at § 13-16(c) provides that "these policies and procedures do not create a contract of any sort, nor do they create a property interest in employment."

Other Considerations

It may be noted that under the council-administrator form of government, the county administrator in many respects is analogous to the county manager. Section 4-9-820, as to the manager, is similar to § 4-9-620 (employment of administrator); § 4-9-830, as to powers and duties of the manager, is similar to § 4-9-630, subsections (1), (2), (7), and (8); and § 4-9-850, as quoted above, is analogous to § 4-9-660. Opinions of our Office dated April 9, 1986; March 5, 1987; and January 8, 1987 exhaustively examined the authority within the council-administrator form of government to employ and discharge county employees (zoning administrator, internal auditor, and county attorney, respectively), concluding that such employment and discharge was ultimately the responsibility of county council but that the county administrator would actually perform the duties since council could deal with county employees only through the administrator. By analogy, the county manager could be said to have responsibilities or duties, respecting employees, like those of a county administrator.

Similarly, under the council-supervisor form of county government, the county supervisor (who is elected) serves as chairman of county council and is the chief administrative officer of the county. By § 4-9-420(11), he is "responsible for the administration of county personnel policies approved by the council including salary and classification plans," and by § 4-9-420(12) he is responsible "for employment and discharge of personnel subject to the provisions of subsection (7) of § 4-9-30" Thus, the supervisor is in many respects analogous to the county manager. In concluding that the county supervisor had the authority, under the council-supervisor form of government, to discharge the county attorney, the court

Mr. McKeown
Page 4
May 7, 1991

in Poore v. Gerrard, 271 S.C. 1, 244 S.E.2d 510 (1978) noted that "county council has the duty and the responsibility to provide for personnel to operate the county functions over which it is granted control and to appropriate funds for the employment of such personnel." 271 S.C. 4. However, the county supervisor would be responsible for employment and discharge of personnel subject to the provisions of § 4-9-30(7).^{1/} Again, by analogy, the county manager could be said to have responsibilities or duties similar to a county supervisor with respect to county employees.

Conclusion

Based on the foregoing, it is our opinion that the relevant statutes and ordinances place the responsibility to discharge the treasurer appointed under the council-manager form of government with the county manager. The manager is the chief administrative officer of the county and is responsible for the employment and discharge of personnel subject to § 4-9-30(7), which would encompass the treasurer, along with other department heads. In so concluding, we concur with the opinion rendered by you as York County Attorney as stated in your letter of April 8, 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

Robert D. Cook
Executive Assistant for Opinions

^{1/} The court also considered § 4-9-430, permitting a county council to remove certain county employees by a two-thirds vote of members present and voting. Section 4-9-430 does not have a counterpart in the council-manager form of government.