

The State of South Carolina



Office of the Attorney General

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March 14, 1991

The Honorable John Courson
Senator, District No. 20
601 Gressette Building
Columbia, South Carolina 29202

Dear Senator Courson:

By your letter of February 26, 1991, you have asked for the opinion of this Office as to the following:

Can Richland County Council repeal the existing ordinances which provide for a merit increase and a special merit increase?

Attached to your letter were (1) an excerpt from the Richland County Code of Ordinances, § 2-367 and (2) a proposed ordinance which would, if enacted, repeal § 2-367.

The issue of compensation of employees of a political subdivision such as a county would be governed by several statutes. Section 8-15-10 of the South Carolina Code of Laws provides generally:

Except as otherwise provided or as prohibited by the Constitution of this State, the compensation of all officers and employees of ... any political subdivision ... shall be as from time to time provided by the ... particular political subdivision

As to counties specifically, § 4-9-30(7) authorizes county governing bodies to "develop personnel system policies and procedures for county employees by which all county employees are regulated...." Personnel classification and salary schedules would certainly be among those policies and procedures which a county council is authorized to develop. Then, a county administrator's powers and duties

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include the responsibility "for the administration of county personnel policies including salary and classification plans approved by council[.]" § 4-9-630(7) (emphasis added).

Acting presumably pursuant to these statutes, Richland County Council adopted an ordinance providing for salary increases for "deserving regular employees whose work has exceeded the standards established for satisfactory performance...." Sec. 2-367(a), Richland County Code. In subsection (b) is noted, "Merit increases will be dependent upon the availability of funds and will be based upon the employee's performance appraisal along with the recommendation of the employee's department head." Special merit raises are authorized by Sec. 2-367(c). We are advised that no such raises have been funded in the county budget since 1980.

The authority given to a political subdivision to adopt ordinances necessarily, if impliedly, includes the power to adopt amendatory ordinances or to repeal those ordinances. 6 McQuillin, Municipal Corporations, § 21.02; Op. Atty. Gen. No. 88-66 (Richland County Council may amend its ordinance regulating enclosure of swimming pools); City Council of Charleston v. Wentworth Street Baptist Church, 4 Strob. 306 (S.C. 1850); cf., Boatwright v. McElmurray, 247 S.C. 199, 146 S.E.2d 716 (1966) (legislative body has plenary power to amend statutes, subject to constitutional limitations). Unless some right has accrued under the present ordinance, which right might be impaired by the amendment or repeal of the ordinance, see City Council of Charleston, supra, there appears to be no constitutional or other prohibition against repealing the ordinance in question (Sec. 2-367 of the Richland County Code). 1/ Therefore, we would advise that Richland County Council would have the authority to repeal or amend the presently-existing ordinance concerning merit and special merit increases for county employees.

The foregoing is provided to you as a member of the General Assembly and has been undertaken without consultation with the Richland County Attorney, who has the final responsibility for advising Richland County Council in legal matters. It is, of course, our policy, whenever authorized by the official requesting an opinion, to consult extensively with the county attorney on legal matters affecting a county, and we do not herein intend to usurp the County Attorney's authority or responsibility in this regard. We also point out that there may be other factors not known to this Office, uniquely known to county officials, which could affect our conclusion.

1/ We assume, for purposes herein, that no vested rights have accrued under this county ordinance. At any rate, we have been advised of none. Any vested rights claimed to be impaired by amendment or repeal of the present Sec. 2-367 would necessarily require evaluation on an individual basis.

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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

cc: C. Dennis Aughtry
Richland County Attorney