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The State of South Carolina



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June 6, 1988

The Honorable James L. Anderson
Mayor, City of Camden
1000 Lyttleton Street
Camden, South Carolina 29020

Dear Mayor Anderson:

By your letter of May 12, 1988, you have inquired as to whether a portion of the Code of the City of Camden would be valid in light of Section 5-7-190 of the Code of Laws of South Carolina. In the City of Camden, the Mayor recommends to the City Council his choice for Mayor Pro Tempore, which person is then elected by City Council to that position. You advise that the intent of this procedure was to give the Mayor his choice of which person on Council should "fill his shoes" in the Mayor's absence or incapacity.

Camden City Code

Section 30.33 of the Camden City Code provides the following as to the Mayor Pro Tempore:

The Council shall, at its first meeting after inauguration, upon recommendation of the Mayor, elect one of the Councilmembers as Mayor Pro Tempore. It shall be the duty of the Mayor Pro Tempore to act as Mayor in the absence of the Mayor from the city or when the Mayor is incapable of the duties of his office. In the absence or inability to act of both the Mayor and Mayor Pro Tempore, the duties of the Mayor shall devolve on and be performed by a Councilmember as the Council shall name.

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Section 5-7-190 of the Code

Section 5-7-190 of the South Carolina Code provides the following:

Immediately after any general election for the municipal council, the council shall elect from its membership a mayor pro tempore for a term of not more than two years. The mayor pro tempore shall act as mayor during the absence or disability of the mayor. If a vacancy occurs in the office of mayor, the mayor pro tempore shall serve as mayor until a successor is elected.

Discussion

In construing a statute such as Section 5-7-190 of the Code, the primary obligation of the courts and this Office is to determine and effectuate legislative intent insofar as possible. Anders v. South Carolina Parole and Community Corrections Board, 279 S.C. 206, 305 S.E.2d 229 (1983). Language used in the statute should be given its plain and ordinary meaning. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980). Where the terms of a statute are clear and unambiguous and leave no room for construction, such terms must be applied literally. Green v. Zimmerman, 269 S.C. 535, 238 S.E.2d 323 (1977).

Section 5-7-190, by its terms, authorizes and requires a municipal council to select from its membership a mayor pro tempore. The statute itself does not require the recommendation of the mayor as a condition for a council member to be selected as mayor pro tempore. The statute appears to contemplate the exercise of discretion, on the part of a municipal council, in the selection of one of its members as mayor pro tempore. Section 30.33 of the Camden City Code appears to remove the discretion of the City Council in selecting the Mayor Pro Tempore, making the vote only a formality since the Mayor has effectively already made the decision.

It therefore appears that Section 30.33 of the Camden City code is most probably in conflict with Section 5-7-190 of the South Carolina Code, to the extent that the recommendation of the Mayor is required for selection of the City's Mayor Pro Tempore. To the extent that a city ordinance is in conflict with state law, the city ordinance is deemed to be void. Law v. City of Spartanburg, 148 S.C. 229, 146 S.E. 12 (1928); Central Realty Corp. v. Allison, 218 S.C. 435, 63 S.E.2d 153

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(1951). Of course, only a court could actually declare the provision of the Camden City Code void.

With kindest regards, I am


Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP:sds

REVIEWED AND APPROVED BY:



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