

# The State of South Carolina



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April 9, 1986

Walter H. Parham, Esquire  
Greenville County Attorney  
100 Courthouse Annex  
Greenville, South Carolina 29601

Dear Mr. Parham:

By your letter of January 27, 1986, you asked whether a county council under the council-administrator form of government would have authority to appoint a zoning administrator, or whether that appointment power would fall within the authority of the county administrator. For the reasons following, we concur with your conclusion that the county administrator would have authority to appoint the zoning administrator.

You have advised that Greenville County adopted a comprehensive zoning ordinance in 1970, before the adoption of the Home Rule Act. By that ordinance, appointment of the zoning administrator was vested in Greenville County Council. Subsequent to the adoption of the zoning ordinance, Greenville County adopted the council-administrator form of government. Council is in the process of revising its zoning ordinance and, in light of the advent of home rule, wishes to know who would now appoint the zoning administrator.

Under home rule, a county council has the authority "to establish such agencies, departments, boards, commissions and positions in the county as may be necessary and proper to provide services of local concern for public purposes." Section 4-9-30(6), Code of Laws of South Carolina (1976, revised 1986). Further, a county council is authorized "to develop personnel system policies and procedures for county employees by which all county employees are regulated ... 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 ... ." Section 4-9-30(7) of the Code. Thus,

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the ultimate responsibility for the employ and discharge of county employees rests with county council.

In counties such as Greenville which have adopted the council-administrator form of government, council is to employ an administrator, who is to be the administrative head of county government. Section 4-9-620 of the Code. As such, he is responsible for administration of all departments of county government over which council has authority to control. By Section 4-9-630, the administrator's powers and duties require him

- (7) to be responsible for the administration of county personnel policies including salary and classification plans approved by council; [and]
- (8) to be responsible for employment and discharge of personnel subject to the provisions of subsection (7) of § 4-9-30 and subject to the appropriation of funds by the council for the purpose . . . .

Authority of council members over county employees is governed by Section 4-9-660 of the Code:

Except for the purposes of inquiries and investigations, the council shall deal with county officers and employees who are subject to the direction and supervision of the county administrator solely through the administrator, and neither the council nor its members shall give orders or instructions to any such officers or employees.

While county councils have ultimate responsibility for the employment and discharge of county personnel, the county administrator is responsible for the actual hiring and firing since a county council generally must deal with county employees through the county administrator. See also Section 4-9-670 of the Code.

A statute virtually identical to Section 4-9-630(8) is Section 4-9-430(12), which specifies the duties of the supervisor in the council-supervisor form of county government. Section 4-9-430(12), which provides for employment and discharge of personnel subject to Section 4-9-30(7) of the Code, has been

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construed in Poore v. Gerrard, 271 S.C. 1, 244 S.E.2d 510 (1978). In construing Sections 4-9-30(7) and 4-9-430(12), the state Supreme Court stated that

county council is empowered to create and fund positions for the operation of county government, but personnel to fill such positions shall be appointed by the county supervisor. This conclusion is reenforced by further provisions of Section 4-9-430 which provide that

Except for the purposes of inquiries and official investigations, neither the council nor its members shall give direct orders to any county officer or employee, either publicly or privately.

271 S.C. at 4. Due to the similarity of all statutes involved, Poore v. Gerrard would be persuasive authority for the conclusion that employment of the zoning administrator would be within the purview of the county administrator.

One other statute may be relevant to your inquiry. Section 6-7-800 of the Code provides in relevant part that

[t]he governing authorities of ... counties may provide for the enforcement of any ordinance or resolution adopted pursuant to the provisions of this chapter [Chapter 7 of Title 6] by means of the withholding of permits and for such purpose may establish and fill the position of building official or other administrative officer ... .

It is unknown whether this statute may have been the basis for Greenville County's establishment of the position of zoning administrator. This statute was adopted prior to the Home Rule Act, see Act No. 487, 1967 Acts and Joint Resolutions, and thus does not take into account the powers granted to county governments operating under the council-administrator form of government. In the event that this statute was the basis for Greenville County's ordinance, the apparent conflict between Sections 6-7-800 and 4-9-620 must be resolved.

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In construing statutes, the primary objective of both the courts and this Office is to ascertain and give effect to legislative intent. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). If at all possible, all provisions of legislative enactments are to be given effect. If there is a conflict between different statutes, the statute adopted most recently will prevail, as it is the most recent expression of the legislative will. Feldman v. South Carolina Tax Commission, 203 S.C. 49, 26 S.E.2d 22 (1943). Since the Home Rule Act, of which Section 4-9-620 is a part, was adopted subsequent to Section 6-7-800, see Act No. 283 of 1975, it would be appropriate to follow Section 4-9-620 and thus the county administrator, rather than council, would be responsible for the employment and discharge of the zoning administrator.

In conclusion, we concur with your conclusion that under the council-administrator form of county government, a county administrator, rather than a county council itself, would have authority to employ and discharge a zoning administrator once that position is established by council following the advent of home rule.

Sincerely,

*Patricia D. Petway*

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Assistant Attorney General

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REVIEWED AND APPROVED BY:

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