

The State of South Carolina



Office of the Attorney General

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March 31, 1987

William E. Whitney, Jr., Esquire
Union County Attorney
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Union, South Carolina 29379

Dear Mr. Whitney:

By your letter of February 17, 1987, you have asked that this Office address the following three questions:

1. Under the council-supervisor form of county government, on what date does the supervisor take office?
2. Does the supervisor, as an elected official, come within the terms of his county's personnel ordinance?
3. Would state law or the Union County personnel ordinance allow or prohibit Union County Council to pay an outgoing supervisor for vacation pay for 1987, or would this be left to the discretion of County Council?

Each of your questions will be addressed separately, as follows.

Question 1

The council-supervisor form of county government is provided for in Section 4-9-410 et seq., Code of Laws of South Carolina (1976). The supervisor serves as the chairman of county council in those counties which have adopted that form of government; however, he votes only to break tie votes. Section 4-9-110 of the Code. His duties are specified in Section 4-9-420 of the Code and include, among others, serving as the council's presiding officer and official spokesman, voting in case of council ties, recommending measures for adoption by council, and many others. The date upon which a newly-elected county supervisor is not specified, however.

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Section 4-11-10 of the Code establishes a time for commencement of terms of county officers generally: "The time for the commencement of the terms of office of the various county officers shall be the first Tuesday in January next after their election" This Code provision was initially adopted in 1907 and with the exception of a minor word change, the provision has remained the same since its adoption.

A portion of the Home Rule Act, Act No. 283 of 1975, Section 4-9-90 provides the following with respect to election and service of county council members:

Members of the governing body of the county shall be elected in the general election for terms of two years or four years as the General Assembly may determine for each county commencing on the second of January next following their election. ...

This provision does not expressly include a county supervisor. However, by implication, the supervisor could certainly follow this statute to take office on January second next following his election.

The statutes creating the offices of county supervisor and county council members, as noted above, were both a part of the Home Rule Act. Section 4-11-10 was not a part of the Home Rule Act and indeed existed well before adoption of the Home Rule Act. In this regard, the courts have stated that sections which are part of the same act must be given force and effect if at all possible. Bradford v. Byrnes, 221 S.C. 255, 70 S.E.2d 228 (1952). Because Sections 4-9-410 and 4-9-90 are part of the same act and further because the supervisor is effectively a member of county council, the more logical and reasoned answer is to have the supervisor assume office on the same date as new county council members (if any were elected simultaneously), on January second.

Notwithstanding the above reasoning, another rule of law would also apply in this instance to permit the same conclusion. When it is impossible, as here, to harmonize two potentially applicable statutes, the statute adopted most recently will prevail, Jolly v. Atlantic Greyhound Corporation, 207 S.C. 1, 35 S.E.2d 42 (1945), as the most recent expression of legislative intent. Section 4-9-90, being the more recent statute, would thus be applicable.

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You had concluded that the supervisor elected in the November 1986 general election would take office on January 2, 1987, for the foregoing reasons. We concur with your conclusion.

Question 2

Your second question concerned the applicability of county personnel policies to the county supervisor under the council-supervisor form of county government.

The powers which have been granted to county councils are enumerated in Section 4-9-30 of the Code. Subsection 7 empowers county councils "to develop personnel system policies and procedures for county employees by which all county employees are regulated except those elected directly by the people ..." (Emphasis added.)

The county supervisor, according to Section 4-9-410 of the Code, must be a "qualified elector of the county, elected at large from the county in the general election for a term of two or four years." Clearly, the supervisor is directly elected by the people and thus is not to be regulated by the county's personnel system policies and procedures. Where, as here, the terms of a statute are unambiguous, such terms must be applied according to their literal meaning. State v. Salmon, 279 S.C. 344, 306 S.E.2d 620 (1983). In the event of a conflict between state laws and local ordinances, state laws will prevail. Law v. City of Spartanburg, 148 S.C. 229, 146 S.E. 12 (1928). Thus, we must conclude that personnel ordinances of Union County would not be applicable to the county supervisor, who is directly elected by the people of Union County.

Question 3

Your final question concerned paying the outgoing county supervisor (whose last day of office was January 1, 1987) for vacation pay for 1987: whether such would be permitted or prohibited by state law or local ordinance, or perhaps left to the discretion of Union County Council. As noted in response to your second question, Section 4-9-30(7) removes the supervisor from the ambit of county personnel policies, so it is necessary to examine law other than the county policy.

In examining the question of paying elected officials for unused annual leave or vacation time, this Office has concluded on several occasions that elected officials were not entitled to annual or sick leave. See, for example, Ops. Atty. Gen. dated January 10, 1983 (no sick or annual leave or termination

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pay for elected officials, constitutional officers); October 5, 1976 (no sick leave for officers elected on a statewide basis); October 2, 1978 (no sick or annual leave for a Family Court judge); and June 11, 1979 (no payment for unused "annual leave" for a county treasurer). The reasoning in those opinions, copies of which are enclosed, appears to be applicable in this instance.

Other problems are inherent in providing vacation pay to such an elected official. As noted in question two, county personnel policies do not apply to county officials elected directly by the people; thus, Union County's personnel policies concerning vacation pay would not be applicable. Because the county supervisor is not a state employee, Section 8-11-620 of the Code, concerning payment for unused annual leave to state employees upon termination of state employment, would not be applicable. There would be no statutory procedure to calculate a rate of sick or annual leave for an elected official, notwithstanding the conclusion of the opinions mentioned above and enclosed herewith.

Furthermore, such payment might be viewed as extra compensation, the payment of which would be prohibited by Article III, Section 30 of the State Constitution, which provides:

The General Assembly shall never grant extra compensation, fee or allowance to any public officer, agent, servant or contractor after service rendered, or contract made, nor authorize payment or part payment of any claim under any contract not authorized by law;

This Office has opined on numerous occasions on this provision, most recently in Op. Atty. Gen. No. 85-116 dated October 10, 1985, a copy of which is enclosed. That the pay would be appropriated by a county council rather than the General Assembly is not decisive; the provision has been applied to school districts (by opinions dated July 19, 1979; February 25, 1955; and September 29, 1981) and municipalities (by an opinion dated July 14, 1958), among other public entities.

In conclusion, we are aware of no provision in state law which would allow an elected official such as a county supervisor to receive payment for unused vacation or annual leave, partly because there appears to be no provision of law granting such leave to an elected official and further because such a payment could be deemed extra compensation in violation of Article III, Section 30 of the State Constitution.

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We trust that we have satisfactorily responded to your inquiries. Please advise if clarification or additional assistance should be needed.

With kindest regards, I am

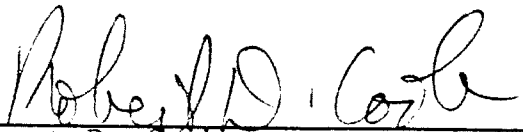
Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an

Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Attorney General