

1982 WL 189205 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 15, 1982

*1 Honorable Thomas E. Huff
Member
House of Representatives
310-B Blatt Building
Columbia, South Carolina 29211

Dear Representative Huff:

You have requested an opinion from this Office regarding the validity of a proposed Aiken County ordinance which, if enacted, will effect certain changes in the functioning of the Aiken County Planning Commission (Commission). In my opinion, some provisions of the proposed ordinance are valid and others are not as hereinafter more fully discussed.

The proposed ordinance seeks to amend one section of a 1974 Aiken County ordinance which established the Commission in accordance with [Sections 6-7-10 et seq., CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended. That section (which essentially tracks the language of Section 6-7-670 of the Code) currently provides as follows:

Section 3. Organization, Meetings, Rules Staff and Finances. The Planning Commission shall elect a Chairman and Vice-Chairman from among its members. The terms of the Chairman and other officers shall be for one year with eligibility for reelection. It shall appoint a secretary who may be an officer or an employee of the Board of Commissioners or of the Planning Commission. The Planning Commission shall adopt rules for the transaction of business and shall keep a record of its recommendations, transactions, findings and determinations; and shall meet at the call of the Chairman and at such times as the Chairman or Commission may determine. All meetings at which official action is taken shall be open to the public. Public announcement is to be made in a newspaper of general circulation and all records of the Commission shall be a public record. The Commission may appoint such employees and staff as it may deem necessary for its work and may make expenditures for salaries of any employees and staff, contracts with consultants, and for the purchase of required equipment and supplies. The expenditures of the Planning Commission, exclusive of gifts, shall be within the amounts appropriated for said purpose by the Board of Commissioners of Aiken County.

The first proposed amendment seeks to change the wording concerning the appointment of a secretary of the Commission so that the third sentence of the section will provide that a member of the Commission may be appointed as secretary. In my opinion, the ordinance already authorizes the appointment of a Commission member who is an officer as secretary pursuant to the following language:

. . . It shall appoint a secretary who may be an officer . . . of the Planning Commission.

Therefore, the proposed amendment is valid insofar as it authorizes the appointment of a Commission member who is an officer as secretary but it is not valid insofar as it authorizes the appointment of a Commission member who is not an officer as secretary.

Ordinarily an ordinance can be amended in any way that a later county council sees fit so long as the amendment does not conflict with any statutory or constitutional provision. 5 McQUILLIN MUNICIPAL CORPORATIONS §§ 15.20 and 19.01. Although no constitutional provision is involved here, an entire chapter of the South Carolina Code of Laws is involved, namely, Chapter 7 of Title 6 relating to the creation and functioning of local planning commissions. The legislation was enacted in 1967 [55 STAT. 863 (1967)] and, while it is permissive insofar as the decision of whether or not to create a local planning commission

is concerned, once the decision is made to create a local planning commission, the statutory provisions are mandatory. That is, a county may decide whether or not to create a local planning commission, but once created, it must operate in accordance with the provisions of the 1967 legislation.¹ Consequently, any proposed amendment to the ordinance establishing the Aiken County Planning Commission must comply with the statutory provisions just as the original ordinance must. As already noted, the original ordinance tracks the language of the statutory provisions and, to the extent that the proposed amendment does likewise, it is valid. For this reason, the proposed amendment authorizing a Commission member to be appointed as secretary is valid only to the extent that it applies to Commission members who are officers. An extension of the eligibility to non-officer members would conflict with the statutory language [§ 6-7-370] and would therefore be invalid.

*2 The second proposed amendment relates to the employment of Commission employees and to the expenditure of Commission funds. It seeks to delete the seventh sentence of the section hereinabove quoted and replace it with the following: All expenditures of the Commission shall be in accordance with the annual budget appropriated by County Council, and shall be administered in accordance with County Purchasing and Finance Procedures. Staff assigned to assist the Commission shall be county employees in accordance with the County Personnel Policy.

In my opinion, this proposed amendment is valid insofar as it requires the expenditures of the Commission to be made in accordance with Aiken County purchasing and finance procedures and insofar as it makes all Commission employees Aiken County employees subject to Aiken County personnel policies and procedures. The power to 'develop personnel policies and procedures for county employees by which all county employees are regulated' and the power 'to provide for a centralized purchasing system for procurement of goods and services' are expressly granted to all county councils in South Carolina pursuant to the 'home rule' legislation. §§ 4-9-30(7) and 4-9-160, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended. Nevertheless, these powers are granted 'subject to the general law' [§ 4-9-30, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended], which general law includes the provisions of Section 6-7-370 of the Code. Section 6-7-370 grants to local planning commissions the authority to 'employ such staff . . . as it deems necessary consistent with funds available' and to 'make expenditures for salaries . . . and for the purchase of required equipment and supplies.' Accordingly, to the extent that the proposed amendment attempts to take away the Commission's authority to hire and fire its employees it is invalid. To the extent that it attempts to take away the Commission's authority to expend appropriated funds it is invalid. In other words, the ordinance can validly make all Commission employees subject to the Aiken County personnel policies and procedures which are applicable to all Aiken County employees but it cannot take away the Commission's statutory authority to hire and fire its employees just as it cannot take away the county auditor's or the county treasurer's statutory right to hire and fire their respective employees. Similarly, while the ordinance can validly require the Commission to expend its funds in a manner consistent with centralized purchasing and finance procedures which are applicable to all Aiken County funds, it cannot take away the Commission's statutory authority to expend appropriated funds for salaries, equipment and supplies.

With kind regards,

Karen LeCraft Henderson
Deputy Attorney General

Footnotes

- ¹ Any county or municipality may, but shall not be required to, exercise any of the powers granted by this chapter. Whenever such a governing authority shall elect to exercise any of the powers granted by this chapter, such powers shall be exercised in the manner hereinafter prescribed. § 6-7-10, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended. [Emphasis added.]

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