

1981 WL 158207 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 30, 1981

\*1 Frank E. Harrison, Esquire  
McCormick County Attorney  
Post Office Box 56  
McCormick, South Carolina 29835

Dear Mr. Harrison:

In response to your request for an opinion from this Office regarding proposed rules of the McCormick County Council, my opinion is that the rule providing for compulsory attendance of members is most probably not authorized under [Section 4-9-110, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended, empowering a county council to 'determine its own rules.' 'Rules' as used in [Section 4-9-110](#) may refer only to rules of procedure such as the creation of committees, etc. See generally, 56 AM.JUR.2d [Municipal Corporations, Counties and Other Political Subdivisions](#) § 156. Moreover, there is authority to the effect that specific statutory authority is required in order for a local governing body to be able to compel the attendance of its members. Id. § 164.

The rule regarding disorderly conduct and possible expulsion should be modified to exclude the expulsion and finding of misconduct provisions because, unlike the municipal 'home rule' legislation [see, [§§ 5-7-200 and 210, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended; cf., [§ 4-9-1070, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended] and the General Assembly's constitutional authority [[S.C. CONST. art. III, § 12](#)], there is no express statutory authority for a county council to find a member guilty of misconduct or to remove (or expel) a fellow member. See generally, 67 C.J.S. [Officers](#) §§ 118 and 123; contrast, however, 56 AM.JUR.2d [Municipal Corporations, Counties and Other Political Subdivisions](#) § 150 ('[i]t is generally considered that a municipal council has the inherent or incidental power to expel one of its own members.')<sup>1</sup> Some sort of penalty short of expulsion (such as temporary removal from the meetings or, perhaps, a monetary penalty) should be considered as a method to curb the disorderly conduct of county council members. You might also consider providing for a report to be sent to the Governor detailing persistent disorderly conduct which might amount to misconduct and ask that then Governor remove the member from office pursuant to [Section 1-3-240, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended.

With kind regards,

Karen LeCraft Henderson  
Senior Assistant Attorney General

Footnotes

- 1 Even this authority, however, concludes that a hearing with all procedural due process rights must be accorded a member before he can be expelled. Id.

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