

1977 S.C. Op. Atty. Gen. 158 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-206, 1977 WL 24548

Office of the Attorney General

State of South Carolina

Opinion No. 77-206

July 1, 1977

*1 Miles Loadholt, Esquire
Attorney at Law
P. O. Box 365
Barnwell, South Carolina 29812

Dear Mr. Loadholt:

You have requested an opinion from this Office as to whether or not the Barnwell City Council is authorized to contribute financially to the payment of attorneys' fees incurred by private citizens who initiated a lawsuit against the Seaboard Coastline Railroad Company in order to prevent the destruction of a bridge which provides access between one portion of the City of Barnwell and another. Our Office cannot reach a final determination concerning the question which you have posed not only because of the novelty thereof but also because of our lack of knowledge as to the facts involved; we would advise you, therefore, to seek a judicial resolution of the issue to the Uniform Declaratory Judgments Act [§§ 10-2001 et seq., CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended].

The authority which I have been able to find indicates that a municipality with a regular, salaried city attorney is not for that reason prevented from employing special counsel in particular instances when the city attorney is absent, ill or disqualified. 56 AM.JUR.2d Municipal Corporations § 220 at 280. Nevertheless, a municipality may not employ counsel in matters in which it is not directly interested or which lie outside its corporate affairs. Ibid. § 222 at 282. Whether or not the destruction of the railroad bridge in Barnwell is a matter in which the City is directly interested would, in my opinion, depend in large part upon its use and maintenance thereof and upon the extent of any public benefit derived therefrom. Regardless of the determination of that issue, however, there would remain the question of whether or not a municipality can reimburse a private citizen for legal fees already incurred by him as opposed to its own retention of an attorney to provide legal services. The determination of whether or not the destruction of the railroad bridge in Barnwell is a matter in which the City is directly interested and, consequently, a matter which involves public purpose and public benefit from the standpoint of financing the enjoining thereof is one to be made by the municipal governing body subject, of course, to final determination by a court of competent jurisdiction if challenged. 64 C.J.S. Municipal Corporations § 1835b at 335.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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