

1977 S.C. Op. Atty. Gen. 221 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-292, 1977 WL 24632

Office of the Attorney General

State of South Carolina

Opinion No. 77-292

September 15, 1977

*1 The Honorable E. Hilliard Thomas, Jr.
Mayor
City of Abbeville
Abbeville, South Carolina 29620

Dear Mayor Thomas:

You requested an opinion as to the constitutionality of a proposed city ordinance which would require all legal services to the City of Abbeville to first be approved by city council and then processed through the city clerk to the city attorney, and furthermore would make the city clerk solely responsible for reporting to the city council the status of all such legal services. This proposed ordinance does not appear to violate any provision of the State Constitution or of State law.

The Constitution provides only that '[t]he structure and organization, powers, duties, functions, and responsibilities of the municipalities shall be established by general law . . . ' S.C.CONST. art. 8, § 8. There are no relevant constitutional limitations on what municipalities may or may not do with city attorneys.

The statutory law, § 5-7-230, CODE OF LAWS OF SOUTH CAROLINA, 1976, provides that the city council may elect or appoint a municipal attorney whose duties shall be as prescribed by law. In addition there are two other statutory sections that impose duties by law on the city attorney:

(1) Section 9-13-30 provides that the city attorney shall advise and represent the board of trustees of the city's firemen's pension fund; and

(2) Section 39-5-130 provides that the city attorney shall assist the Attorney General upon request to prosecute violations of the Unfair Trade Practices Act.

Apart from these statutory duties, the city attorney would be required only to perform the duties of his office in a manner prescribed by city ordinance.

This opinion is consistent with the law in other jurisdictions.

As a general rule, the duties of a city attorney require him to act as attorney, counsel, and legal advisor of every agency of the city, and of the heads of the departments . . . [I]n construing an ordinance defining his duties in general terms, all duties naturally appertaining to his office will be held to be covered unless the language used clearly indicates a contrary intent.

A city attorney has such duties as are imposed on him by law . . . [H]is duties may be broadened or narrowed by . . . ordinance, or rules or orders properly promulgated by the municipal authorities . . . 62 C.J.S. § 695(d).

Although one may challenge the wisdom of the proposed ordinance, there is no constitutional or statutory provision which it violates.

Sincerely yours,

Karen LeCraft Henderson
Assistant Attorney General

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