

1978 WL 34700 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 14, 1978

\*1 David B. Ward, Esquire  
City Attorney  
Town of City View  
Horton, Drawdy, Marchbanks, Chapman & Brown, P.A.  
Post Office Box 10167 F.S.  
Greenville, South Carolina 29603

Dear Mr. Ward:

You have requested an opinion concerning the effect of the Home Rule Act on the authority of the municipal council of City View to abolish the municipal water commission and then to perform those functions by the council itself. It is the opinion of this office that the Home Rule Act does not prohibit the Town Council from taking the actions described above.

Municipalities are given the authority to enact ordinances for the general welfare and convenience of the municipality, insofar as such ordinances are not inconsistent with state law. [§ 5-7-30, S.C. CODE](#), 1976. Those municipalities adopting the council form of government, as City View has done, have been given the specific power to establish municipal departments, offices, and agencies. [§ 5-11-40, S.C. CODE](#), 1976. The power to establish such departments must, in this instance, also entail the power to abolish those departments.

Whether a municipality has the power to abolish a municipal department or agency must be determined in accordance with state law. 3 McQUILLIN, MUNICIPAL CORPORATIONS § 12.39. State law does not expressly grant to municipalities the power to abolish municipal departments. However, the law does implicitly recognize that municipalities do possess this power. The chapter in the code setting out the general powers of municipalities specifies that when a municipality abolishes a municipal department, office or agency, such an action must be taken by ordinance. Although this is not an express grant of power to a municipality, it does constitute an acknowledgment that municipalities do in fact possess the power to abolish departments and agencies.

Furthermore, this is the only reasonable conclusion under the State Constitution. If a municipal department must be abolished, there are only two possible entities that might take that action: the legislature or the municipality. But the legislature is prohibited from enacting a local law for a specific municipality. [Art. VIII, Sect. 10, S.C. CONST.](#) Therefore, the authority to abolish a municipal department or agency must lie with the particular municipality. The only other alternative to this constitutional requirement would be that no municipal department or agency could be abolished once it is established. But this would grant municipal departments and agencies, in essence, a perpetual existence. It is not reasonable to presume that the legislature intended that result in enacting the Home Rule Act. Therefore, the conclusion is inescapable that a municipality has the power to abolish a department or agency which it has created.

Sincerely yours,

David C. Eckstrom  
Staff Attorney

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