

1978 WL 34682 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 2, 1978

\*1 Honorable Larry L. Koon  
House of Representatives  
State of South Carolina  
Columbia, South Carolina

Dear Representative Koon:

You have requested an opinion from this office as to whether or not the Mayor of Batesburg is authorized to dismiss a member of the Batesburg volunteer fire department. In my opinion, he is so authorized.

My understanding is that Batesburg operates pursuant to the mayor-council form of municipal government. [Section 5-9-30, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, empowers the mayor in that form of government:

(1) to appoint and, when he deems it necessary for the good of the municipality, suspend or remove all municipal employees and appointive administrative officers provided for by or under Chapters 1 through 17, except as otherwise provided by law, or personnel rules adopted pursuant to Chapters 1 through 17.

According to this provision, the mayor is authorized to hire and fire all municipal employees and officers 'except as otherwise provided by law, or personnel rules.' I am enclosing copies of earlier opinions from this office concluding that the language 'except as otherwise provided by law' does not include a municipal ordinance but, instead, has reference to statutory law only. For the reasons stated in those opinions, I think that the fact that a Batesburg ordinance provides for a different method of hiring and firing members of the volunteer fire department cannot supersede the hereinabove-quoted provision which vests those powers in the mayor. I am also enclosing a copy of another earlier opinion from this office concluding that the 'personnel rules' language refers primarily to any grievance procedure which the municipality might adopt rather than to a grant of authority to change the hiring and firing powers possessed by the mayor. You should note that if Batesburg does provide for a grievance procedure for its employees and officers, that procedure must 'conform substantially' to the provisions of [Sections 8-7-110 et seq., CODE OF LAWS OF SOUTH CAROLINA](#), 1976.

This opinion is based on the assumption that Batesburg has not heretofore established a civil service commission pursuant to the provisions of [Sections 5-19-110 et seq., CODE OF LAWS OF SOUTH CAROLINA](#), 1976, and that the members of the volunteer fire department are 'municipal employees' for the purpose of [Section 5-9-30 of the 1976 Code](#). In my opinion, they most probably are municipal employees since they are entitled to workmen's compensation [[§§ 42-1-40 et seq., CODE OF LAWS OF SOUTH CAROLINA](#), 1976] and certain retirement [[§§ 9-13-10 et seq., CODE OF LAWS OF SOUTH CAROLINA](#), 1976] and firemen's insurance benefits [[§§ 38-57-10 et seq., CODE OF LAWS OF SOUTH CAROLINA](#), 1976].

With kind regards,

Karen LeCraft Henderson  
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