

1975 WL 29511 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 19, 1975

*1 Mr. William K. Charles, Jr.
City Attorney
City of Greenwood
606 Textile Building
Greenwood, South Carolina 29646

Dear Bill:

I am enclosing herewith a copy of a letter from Howard Burns dated January 7, 1975, concerning the authority of the Commissioners of Public Works of the City of Greenwood vis-a-vis the City Council of Greenwood to establish the compensation of members of the Commissioners of Public Works.

Mr. Littlejohn and I have researched this problem extensively and I am submitting our observations below. This is a matter which should be handled by you as City Attorney, as it closely involves the City of Greenwood, and I am merely submitting our views for any possible help they may be. If you wish me to respond directly to Howard Burns, I will be pleased to do so.

It appears that the Commissioners of Public Works are virtually an autonomous body. The decision in City of Spartanburg v. Blalock is persuasive, if not controlling, in this respect: 'It is our conclusion that the power to fix rates, dispose of surplus revenue, and otherwise control and direct the fiscal policies of the waterworks system—is vested in the Commissioners of Public Works—.'

The Commissioners of Public Works was created by statute which was construed in Blalock. In one instance, as noted by Howard, the Legislature has fixed the salary for the Commissioners in Spartanburg, at \$450 per year in 1933, whereas in 1934 they authorized the Commissioners to fix their salaries at whatever amount they deemed appropriate, not to exceed \$1200 per year. The Legislature apparently construed the statute creating the Commissioners of Public Works as not vesting in them the authority to fix their salaries. In this connection, the following from Ridgill v. Clarendon County is pertinent:

'As respects compensation, an office is taken cum onere, and public officers have no claim for official services rendered except where, and to the extent that, compensation is provided by law. The duties of a public officer may be exacted without specific compensation, and, when no compensation is provided, the rendition of services is deemed to be gratuitous.' 67 C.J.S. Officers § 83.

Incidentally, the above quotation is not from Ridgill but that case was referred to in an opinion rendered by this Office on May 3, 1963, a copy of which is enclosed herewith. The same opinion goes on to state: 'The matter of compensation could be provided for in the City ordinances of Laurens, which I do not have available.' No authority is given for this conclusion.

The conclusion which we have tentatively reached is that the Commissioners do not have the authority to fix their own salaries. This is a matter which is vested in the Legislature and the basis of this conclusion is the construction given the Act by the General Assembly. Opposed to that is Howard's observation that, as a matter of practice, the Commissioners of Public Works commonly fix their own salaries and I presume that this is correct. If, therefore, there is any authority

for fixing the compensation of Commissioners aside from that vested in the Legislature, it rests in City Council, and I am not convinced that it resides there. The County Manager Act for Greenwood disavowed tacitly any connection or authority between City Council and the Commissioners of Public Works, as noted in Howard's letter. The basic problem appears to me to be whether there is any authority for the City Council to fix the compensation of an autonomous agency created by the General Assembly, which is recognized in Blalock as an agency of the City.

*2 Please advise me of your reaction to these observations and whether you wish me to respond to Howard Burns directly.

With best wishes,
Very truly yours,

Daniel R. McLeod
Attorney General

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