

1973 WL 26775 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 15, 1973

***1 In Re: R-428, H-1948, Lexington County Employees, Amending Act No. 1067 of 1972**

Honorable Sherry Shealy
Member
House of Representatives
Lexington County
Box 272
Cayce, South Carolina 29033

Dear Miss Shealy:

You have propounded several questions relating to the subject Bill and Act.

I.

Does Section 1 of R-428 require that all employees of elected officials be employed by the County Manager, but that those employed must be recommended by the elected official?

REPLY: The word ‘may’ in a statute is usually construed to be used in the permissive sense unless the statute as a whole indicates clearly an intent on the part of the Legislature that it be construed as mandatory. I can see no such clear indication of intent in Act No. 1067 as amended by R-428.

Section 6 clearly does not indicate an intent to give to the Manager any power or authority not possessed by the Council. As to hiring employees generally, the Section reads:

‘The manager shall be the appointing authority for all employees whose appointments are vested in the council—.’

Since the Council is the governing body of the County, all employees of the County are subject to its power to appoint, except those for whom other provision is made by the Constitution or by another controlling statute. For example, a uniform statute of Statewide application provides that sheriffs shall appoint their deputies. In the case of sheriffs, Act No. 1067 could not take this power from the sheriff. Where no such special provision is made, however, legislation may provide for appointment of county employees who work for and under the supervision of elected officials.

In view of the foregoing, it is the opinion of this Office that the Manager has the authority under Act No. 1067, ?? amended, to hire employees of elected officials of the County—except where special provision is made relative to a specific official—and that, in doing so, he may at his discretion follow the recommendation of the elected official for whom the employee shall work. Under Act No. 1067, before amendment by R-428, the Manager was required to follow the recommendation of the elected official, although the power of appointment was vested in the Manager.

II.

Does the Council have the authority to hire all County employees?

REPLY: The Council, being the governing body of the County, has the authority to hire all County employees except where the Constitution or a controlling statute makes special provision for specified employees, such as sheriffs' deputies.

III.

Does Act No. 1067, as amended, apply to the County Auditor, the County Treasurer, and Magistrates, since they are not elected officials?

REPLY: In my opinion, the Act applies to all employees of the County, whether they are working under the supervision of elected officials or appointed officials—unless there is other controlling provision of law relating to specified employees. By uniform, Statewide law (Sections 43-301, et seq., 1962 Code of Laws of South Carolina), magistrates are permitted to appoint their constables; and by another such law (Sections 53-71, et seq., 1962 Code), sheriffs are permitted to appoint their deputies.

IV.

*2 Who may discharge County employees?

REPLY: Under provisions of Section 6 of the Act, as amended, the County Manager may discharge any employee whose appointment is vested in the Council, except the county attorney and the clerk of the Council. The Manager has no authority to hire or fire any deputy sheriff or magistrate's constable, since other controlling, uniform, Statewide statutes make other provision for those employees.

Yours very truly,

Joseph C. Coleman
Deputy Attorney General

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