

1973 WL 26819 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 17, 1973

***1 In Re: Ordinance—Town of Ware Shoals**

Mr. Marvin r. Watson
City Attorney
Ware Shoals
Messrs. Watson & Ayers
Attorneys at Law
The Grier Building
Post Office Drawer 799
Greenwood, South Carolina 19646

Dear Marvin:

Thank you for your letter of July 12 inquiring as to whether the proposed ordinance of the City of Ware Shoals is violative of the Constitution of this State or the United States.

The proposed ordinance subjects town employees to dismissal for failure to pay debts promptly or within a reasonable length of time. It was my first impression upon reading the ordinance that it would be violative of the due process provisions of the Constitution of this State and of the United States in that it may deprive an individual of his right to contest the validity of a debt without incurring the risk of probation or dismissal by the city and I am not entirely convinced that this initial reaction is not correct. However, the general rule appears to be that, in the absence of a prohibitory statute or the establishment of a fixed term of office or employment, the right to dismiss without notice or hearing is vested in the employing authority. See [State v. Wannamaker](#), 213 S.C. 1, which holds that where a term of office is fixed by law, removal can only be accomplished for a cause with notice and hearing. In the case of the Town of Ware Shoals, I am not aware of any civil service statute or other law which imposes on the town a requirement that cause must be given before dismissal. I am not advised as to whether Ware Shoals has adopted the grievance procedure for cities and municipalities permitted by a statute adopted in 1971 but, if so, the grievance procedure, of course, must be followed. Otherwise, in the absence of any controlling contract or statute, it appears that the employees of the city hold at the pleasure of the appointing authority. See 4 McQUILLIN, MUNICIPAL CORPORATIONS § 12.250. See also [Alomar v. Dwyer](#), 447 F.2d 487, decided 1971 by a three-judge court of preeminent membership.

Based upon the foregoing, it is my view that the ordinance is probably valid but I should like to be advised if the town has adopted a council-manager form of government or whether it has continued under the form of initial charter.

With best wishes,
Very truly yours,

Daniel R. McLeod
Attorney General

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