1973 WL 27624 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
October 8, 1973

***1 Re: Richland County Ordinance Preventing Political Activity by County Employees**

The Honorable W. D. Grimsley
Member
Richland County Council
Post Office Box 4069
Columbia, South Carolina 29204

Dear Mr. Grimsley:
You have requested the opinion of this Office as to the validity of an ordinance adopted by the County Council for Richland County on June 15, 1973, which reads as follows:
'Political Activity. Partisan political activity by any full-time employee shall be prohibited. Violations of this rule will result in dismissal, or such other disciplinary action as the County Administrator and/or County Council shall deem appropriate.'

This type of legislation is generally recognized as within the constitutional power of cities, counties and states. Numerous cases have reached the various courts, including the Supreme Court of the United States, and an almost unbroken line of cases has resulted, upholding the validity of such enactments.

I am therefore of the opinion that this legislation is constitutional in concept.

You point out also that the authority for the enactment of this ordinance is sought to be based upon Section 14-3201.4, Code of Laws, 1962, which provides:
'(b) The formulation and implementation of personnel policies for county employees including supervision of insurance programs; (excepting the right of certain county officers to select their own employees, etc.)—.'

You inquire if the Council has the authority to take such action under the above statute.

It is my opinion that this is within the authority of the Council by the specific grant of power given to the County Council to formulate and implement personnel policies for County employees. This, in my opinion, is specific enough authority to vest the County Council to undertake the enactment of the ordinance in question.

I point out, however, that the ordinance may be subject to question by reason of its somewhat vague and imprecise terminology. A provision of this nature is required to be capable of informing the persons it reaches of the types of activity which are prohibited. The Hatch Act was upheld on the ground of overbreadth in a recent decision of the United States Supreme Court and, while pointing out that the Hatch Act was defective in some respects, it would not be struck down in that there were regulations existing, expressly setting out what acts would violate the law and those which would not. I do not conclude that the Richland County ordinance is invalid for vagueness or overbreadth but I do feel that it is particularly susceptible to attack upon this ground.

This matter is one which lies within the jurisdiction of the County Attorney for Richland County. I have discussed the receipt of your letter with Mr. William F. Able, County Attorney, and have undertaken to express an opinion on the matter only after pointing out to Mr. Able that a number of other counties have presented the same question to this Office and he has givne his concurrence and approval to the forwarding of this opinion to you. His judgment upon the matter would control and I would defer to any contrary conclusions he may teach upon the matter.

***2** A comprehensive memorandum prepared in this Office for my use is attached hereto.

With best wishes,
Very truly yours,

Daniel R. McLeod
Attorney General

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