

1978 WL 34739 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 3, 1978

*1 R. Markley Dennis, Esquire
Berkeley County Attorney
Post Office Box 1174
Moncks Corner, South Carolina 29461

Dear Mr. Dennis:

In response to our conversation on Wednesday, March 1, 1978, concerning various 'home rule' questions, I have the following comments:

1. The South Carolina Association of Counties will forward to you a copy of various model ordinances of general application.
2. Enclosed is a copy of an earlier opinion from this Office concerning the commencement of terms of office of the county treasurer and the county auditor and the extent to which a county may presently alter the commencement of those terms.
3. As to the setting of staggered laws for the members of the Berkeley County Council to be elected in November, 1978, [Section 4-9-100, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, states in part:
If necessary, in the initial election for members one-half plus one of the members elected who receive the highest number of votes shall serve terms of four years and the remaining members elected shall initially serve terms of two years only . . . [Emphasis added.]

I think that Berkeley County should use this method of determining which members initially serve two years and which serve four years, especially since Act No. 290 of 1977 [60 STAT. 887 (1977)] fails to delineate from which single member election districts the four-year and two-year council members are to come; in other words, the method prescribed by [Section 4-9-100](#) is 'necessary' because of the defect in the provisions of Act No. 290.

4. As to the candidates for Berkeley County Council members, I think that both a teacher in the Berkeley County public school system and a federal employee or officer (if he is otherwise eligible under the provisions of the Harth Act) can run for and be elected to the office of Berkeley County Council member without running afoul of any prohibited master-servant relationship. See generally, §§ 21-1451 et seq., [CODE OF LAWS OF SOUTH CAROLINA](#), 1962, as amended; cf., 56 STAT. 131 (1969). I think, however, that a Berkeley County employed paid by county funds cannot be elected to the Berkeley County Council because such a combination would violate the master-servant relationship. See, [McMahan v. Jones](#), 94 S.C. 362 (1913). I am enclosing a copy of an opinion rendered earlier by this Office on the question of a county employee serving as a county council member. Of course, he may run for the office and, if successful, he may serve as a member but he cannot continue his county employment.

5. As to the basis for setting filing fees in the party primaries, my understanding from Treva Ashworth is that the amount need not be based upon the salary of the office sought except in the case of candidates for the House of Representatives. Cf., § 7-11-410 and 7-11-430, [CODE OF LAWS OF SOUTH CAROLINA](#), 1976. She stated that several municipalities have set a flat filing fee of one hundred (\$100.00) dollars.

*2 6. As to the matter of a county litter officer, [Sections 44-55-1010](#) through 1230, CODE OF LAWS OF SOUTH CAROLINA, 1976, relating to garbage and solid waste collection and disposal by counties, do not expressly authorize the employment of a county litter officer. Section 44-55-1050 states that the county health department is to supervise the collection and disposal of garbage and Section 44-55-1220 states that the county governing body is to promulgate rules and regulations to enforce the collection and disposal of solid waste. Whether or not the power to enact rules and regulations is sufficient in and of itself to authorize the employment of a litter officer, at least one with arrest powers, is a matter which is not free from doubt. It may be that a county can appoint a litter officer and then that officer can apply to the Governor for a commission as a special deputy pursuant to [Sections 23-1-60 et seq.](#), CODE OF LAWS OF SOUTH CAROLINA, 1976. I noticed in the Local Law Index that the Oconee County Litter Officer, who is a special deputy sheriff, was created by legislation. 57 STAT. 1073 (1971). Finally, I understand that the General Assembly is currently considering litter legislation which may also be of use to counties. If not, another alternative would be to amend the statutes relating to garbage and solid waste collection and disposal by counties so as to explicitly authorize the employment of a county litter officer with the power of arrest.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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