

September 13, 2007

The Honorable Phillip E. Clardy
Mayor, Town of Williamston
Post Office Box 70
Williamston, South Carolina 29697-0070

Dear Mayor Clardy:

We received your letter requesting an opinion of this Office concerning the actions of a particular council member. In your letter, you provided us with the following information:

On July 2, 2007, Councilman Marion W. Middleton, Jr. did decide and instruct that the time capsule belonging to the Town of Williamston be exhumed. This decision, and the instruction given to town personnel, was without any authorization of the mayor or town council. Although the Town of Williamston has the Mayor-Council form of government, town council action has been required for all previous events involving the time capsule since its burial in 1976.

Based on this information, you make the following two inquiries:

Can, or should, a member of town council in the Mayor-Council form of government act independent of the other members of council in determining an action of this caliber that has required, in every respect, an action of town council in public forum otherwise?

Can, or should, a member of town council act independent of the other member of council in instructing any employee to perform this action without proper consent of a majority of council, or at least, notification to the Mayor of this action?

Law/Analysis

Chapter 9 of title 5 of the South Carolina Code governs mayor-council forms of municipal government. Under this form of government, the duties, functions, and responsibilities of the municipality are exercised by the members of council and the mayor. S.C. Code Ann. § 5-9-20 (2004). Our Supreme Court has recognized that when authority is given jointly to several persons, “they must generally act jointly or their acts are invalid.” *State v. McMillan*, 52 S.C. 60, 29 S.E. 540, 545 (1898) (quoting *Cooley v. O’Connor*, 79 U.S. 391, 398 (1870)). Furthermore, in an opinion of this Office pertaining the delegation of authority of a body to one of its members, we stated:

“[A]cts by individual members of a public body cannot bind the municipality unless officially sanctioned in accordance with a statute. The member of the governing body are chosen by the people to represent the municipality and they are charged with a public trust and the faithful performance of their duties and the public is entitled to the judgment and discretion of each member”

Op. S.C. Atty. Gen., November 13, 2003 (quoting 56 Am. Jur. 2d, *Municipal Corporations*, § 134).

In a similar opinion of this Office issued in 1989, we addressed the authority of a single member of a local public works commission. Op. S.C. Atty. Gen., April 13, 1989. We found: “Unless otherwise provided by statute, the authority of a commission may not be exercised by a single member of such body, or less than a majority.” *Id.* Thus, we concluded a single member of the commission did not have authority to make decisions concerning direction and control of the water and sewer department on his own by virtue of the fact that he was elected while the other commissioners were appointed. *Id.* Rather, “all such decisions must be made by a majority vote of a quorum of the commissioners of public works, except where the Town ordinance provides otherwise.” Furthermore, in another opinion, we recognized with regard to city and town councils, that “any action taken by the City Council will have to be done by the majority vote thereof” Op. S.C. Atty. Gen., March 5, 1963.

Based upon these principles cited above, we do not believe a single council member may individually take action on behalf of a town unless such authority is provided to that council member by law. Therefore, in addressing your questions, assuming no statute or ordinance provided councilman Middleton with authority to exhume the time capsule, it appears that such action may only be taken by Town Council as a whole. Without the vote or action of a majority of the members of council, councilman Middleton would be without the authority to instruct Town employees to exhume the time capsule.

The Honorable Phillip E. Clardy
Page 3
September 13, 2007

Very truly yours,

Henry McMaster
Attorney General

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Assistant Attorney General

REVIEWED AND APPROVED BY:

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