



HENRY McMASTER
ATTORNEY GENERAL

March 26, 2010

Elbert O. Duffie, III, General Counsel
Town of Edisto Beach
P. O. Box 1215
Walterboro, South Carolina 29488

Dear Mr. Duffie:

We received your letter requesting an opinion of this Office concerning term limits for a municipal council. You asked “whether a municipal council in the State of South Carolina can enact term limits on its council members, whether the method be by ordinance or by referendum vote.” You also asked, “if the answer to the previous question is no, . . . [can] the General Assembly[,] by local legislation, grant the Town of Edisto Beach the ability to enact an ordinance establishing term limits for its council members.” As noted in your request, prior opinions of this Office have addressed the question of whether term limits can be enacted. This opinion will address those prior opinions regarding term limits for council members, as well as other relevant opinions, caselaw, and statutes.

Law/Analysis

On numerous occasions, we have opined that county councils do not have the authority to set term limits for its members. See e.g., *Ops. S.C. Atty. Gen.*, July 21, 2009; August 14, 1995; June 24, 1993.

In *Hospitality Ass’n of South Carolina, Inc. v. County of Charleston*, 320 S.C. 219, 464 S.E.2d 113 (1995), the South Carolina Supreme Court provides background information on local government authority. “For generations, legislative delegations of the General Assembly controlled virtually every aspect of local government.” *Hospitality Ass’n*, 320 S.C. 219, 224. However, a study committee was created in the mid-1960s to recommend amendments to the Constitution. By 1969, the Committee decided to amend the Constitution and “place the control and management of county and municipal affairs in the hands of duly elected local officials.” *Hospitality Ass’n*, 320 S.C. at 224-25. Although the General Assembly adopted what is popularly referred to as “home rule,” Art VIII of the South Carolina Constitution “left it up to the General Assembly to decide what powers local governments should have. *Id.* at 225-26. Therefore, the General Assembly, acting under its authority, “enacted various statutes regarding the powers of counties and municipalities.” *Id.*

Article I, section 5 of the South Carolina Constitution (2009) provides that:

All elections shall be free and open, and every inhabitant of this State possessing the qualifications provided for in this Constitution shall have an equal right to elect officers and be elected to fill public office.

While the Supreme Court has held in McClure v. McElroy, 211 S.C. 106, 44 S.E.2d 101 (1947) that the constitutional provision quoted above only applies to constitutionally created offices, it has been repeatedly recognized that “an office created by legislative action is wholly within the control of the Legislature.” Op. Atty. Gen., July 21, 2009. County councils were “created by the Legislature and the Legislature did not provide for term limits[;]” therefore, county councils do “not have the authority to impose term limits. Op. Atty. Gen., July 21, 2009 (quoting McLure, 211 S.C. 106, 117).

In another opinion of this Office dated June 24, 1993, we concluded that the General Assembly did not enact term limits, therefore the council itself may not enact term limits. We analyzed that position as follows:

The General Assembly created the [office] of county council . . . pursuant to the Home Rule Act, Act No. 283 of 1975. . . . Section 4-9-90 sets the term of office for county council members at either two or four years. However, neither § 4-9-90 nor any other Code section specifies a limit on the number of terms or number of years which a county council member may serve. Thus, we conclude that the General Assembly has not limited the length of service of a county council member . We can locate no express authority for a county council . . . to adopt such a limitation on service on a county council. Thus, we must conclude that a county council would not have the statutory authority to limit the number of terms or number of years which a county council member might serve.

Under S.C. Code § 5-7-160, the General Assembly deemed that powers of municipalities are vested in their councils. Hence, city councils, town councils, and county councils alike were all established by the General Assembly through general law. Hence, the Edisto Beach Town Council, like the county councils mentioned in the July 21, 2009 and June 24, 1993 opinions, lacks the authority to establish term limits for its council members.

As for the second question, “nothing would prevent [the General Assembly from enacting] statutory authority limiting the terms of council members.” Op. Atty. Gen., June 24, 1993. However, such a change would have to be made state-wide; the General Assembly could not specifically grant the Town of Edisto Beach authority to enact such an ordinance. The South Carolina Constitution explains that “[n]o laws for a specific county shall be enacted and no county shall be exempted from the general laws.” S.C. Const. Art. VIII, § 7. The Constitution further explains that special laws are usually prohibited; “where a general law can be made applicable, no special law shall be enacted.” S.C. Const. Art. III, § 34.

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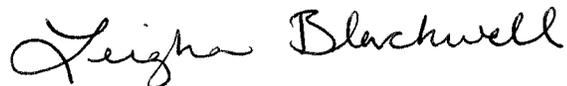
Conclusion

Based on the reasoning presented in prior opinions of this Office, we believe that because municipal councils were created by the Legislature, only the Legislature may limit the number of terms a member might serve. A municipal council does not have the authority to enact term limits on its council members, regardless of the method - by ordinance or referendum vote.

The General Assembly is unable to grant the Town of Edisto Beach special authority to enact a term limit ordinance because doing so would be classified as the creation of a special law and therefore unconstitutional. S.C. Const. Art. VIII, § 7 and Art. III, § 34.

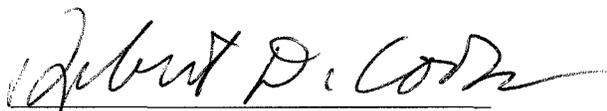
Sincerely,

Henry McMaster
Attorney General



By: Leigha Blackwell
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General