



HENRY McMASTER
ATTORNEY GENERAL

September 25, 2009

The Honorable R. Keith Summey
Mayor, City of North Charleston
Post Office Box 190016
North Charleston, South Carolina 29419-9016

Dear Mayor Summey:

We received your letter requesting an opinion of this Office as to the ability of the the City of North Charleston (the "City") to lease office space to its City Attorney. Along with your request, you provided the following information:

The City of North Charleston retains a City Attorney who leases an office in a private office building that is not located in the current City Hall. The City Attorney is the department head of the City's Legal Department and supervises City employees, including two Deputy City Attorneys, one prosecutor and one paralegal. The City has constructed a new City Hall and wishes to lease office space to the City Attorney at a fair market rate per square foot basis in the new facility. Having the City Attorney located in the new City Hall will make access issues much more convenient for the City and will save money in reduced travel time for City employees and the City Attorney for City-related legal matters. The proposed lease further states that the lease terminates if he should cease to be the City Attorney.

Although the City Attorney's primary client is the City, he also has a private practice and would use the leased space in the new City Hall for aspects of the private practice of law in addition to working for the City under contract. The private practice generally handles complex litigation. Most clients are out of the local area and the practice has very little "walk in" traffic. His staff includes one paralegal who is privately employed for his private practice and another Deputy City Attorney who works for him on both City and private matters.

Based on this information, you ask that we render “an opinion as to whether the above-described lease agreement violates South Carolina law.”

Law/Analysis

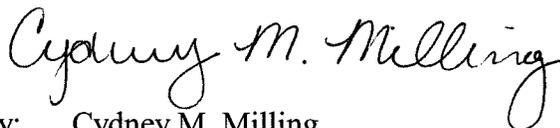
Section 5-7-40 of the South Carolina Code (2004) provides municipalities with the authority to own and dispose of real and personal property and specifically states that municipalities may lease real property so long as such action is effected by an ordinance.

In an opinion of this Office issued in 1984, we noted that although section 5-7-40 allows municipalities to dispose of their property, “[i]n Haesloop v. City of Charleston, supra, the court noted that as all powers of municipal corporations are held in trust for public use, so would all property held by such corporations be held in a fiduciary capacity.” Op. S.C. Atty. Gen., July 6, 1984 (citing Haesloop v. City Council of Charleston, 123 S.C. 272, 282, 115 S.E. 596, 600 (1923)). Moreover, we added: “According to the court, it would be a breach of trust upon which this property is held to donate it to a strictly private use without receiving in return some consideration of reasonably equivalent value.” Id. (citing Haesloop, 123 S.C. at 283, 115 S.E. at 600).

By your letter, you indicate that while the City Attorney represents clients other than the City and employees personnel other than City employees, a majority of his time is spent on City matters. Therefore, we do not believe his use of office space in City Hall is primarily private in nature and as you indicate will provide a great benefit to the City. In addition, you state that the City Attorney will agree to pay a fair market rate for space leased by the City. Thus, we do not believe a court would find the City’s lease of office space to the City Attorney amounts to a breach of trust by the City.

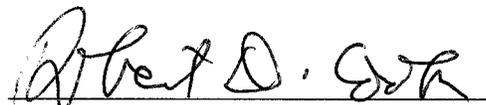
Very truly yours,

Henry McMaster
Attorney General



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REVIEWED AND APPROVED BY:



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