

June 1, 2007

R. Allen Young, Esquire
Town Attorney, Town of Mount Pleasant
Post Office Box 745
Mount Pleasant, South Carolina 29465

Dear Mr. Young:

We understand from your letter you request an opinion concerning a change in election dates. In your letter, you informed us that “the Town of Mount Pleasant is presently in the process of possibly changing its election date from September of even years to November of odd years.” You state you are also concerned with whether the approximate fourteen month extension to the Town Council’s terms of office as a result of this change may violate section 5-7-170 of the South Carolina. “Specifically, Councilmembers cannot vote themselves a pay raise - council pay increases cannot take effect until after the next general election. By analogy, if Councilmembers extend their terms, could their salaries over the period of the extension (14 months) be viewed as salary increases, and therewith, a violation of the referenced Code provision?”

Law/Analysis

As you stated in your letter, this Office issued three opinions concerning the Towns of Mount Pleasant’s ability to change its election date. Ops. S.C. Atty. Gen., June 6, 2003; December 8, 2005; October 10, 2006. In those opinions, we interpreted section 5-15-40 of the South Carolina Code to allow each municipality to establish the time for general and special elections. Id. Thus, we concluded municipalities may change the date of their elections even though such a change may shorten or extend the term of an elected official’s office. Id. However, you are now concerned that the extension in the terms of office may violate section 5-7-170 of the South Carolina Code (2004). Section 5-7-170 provides:

The council may determine the annual salary of its members by ordinance; provided, that an ordinance establishing or increasing such salaries shall not become effective until the commencement date of the terms of two or more members elected at the next general election following the adoption of the ordinance, at which time it will become effective for all members whether or not they were elected in such election. The mayor and council members may also receive payment

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for actual expenses incurred in the performance of their official duties
within limitations prescribed by ordinance.

In past opinions, we interpreted this provision as precluding a pay raise from going into effect until after the next general election. Op. S.C. Atty. Gen., September 20, 1983. Thus, just as you stated in your letter, if Town Council decides to change the date of its elections, any pay raises voted on prior to the election would not go into effect until after the newly elected members take office.

However, you also inquire as to whether the compensation received by council members during the extension of the term of office constitutes a pay raise and therefore, would be in violation of section 5-7-170. So long as the compensation of the Town Council members remains unchanged and is consistent with the compensation the members received prior to any ordinance increasing their pay, we do not believe payments to such members in this manor run afoul of section 5-7-170.

Very truly yours,

Henry McMaster
Attorney General

By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General