



HENRY McMASTER
ATTORNEY GENERAL

April 21, 2009

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

Dear Mr. Young:

We understand you desire an opinion of this Office concerning a mayor pro tempore's service as mayor pursuant to section 5-7-190 of the South Carolina Code. In your letter, you provide the following information:

Please know that it is a matter of public record that our Mayor has Alzheimer's Disease. As such, the possibility exists that our Mayor could resign sometime between now and our next regular election in November of this year.

Accordingly, our South Carolina Code of Laws provides in Section 5-7-190 that "the Mayor Pro Tempore shall act as Mayor during the absence or disability of the Mayor. If a vacancy occurs in the office of the Mayor, the Mayor Pro Tempore shall serve as Mayor until a successor is elected." Note also that Section 30.06 of our Mount Pleasant Code of Ordinances patters the same.

Accordingly, you ask "what is meant by 'serve as Mayor'? Would the Mayor Pro Tempore become the Mayor and, thus, be sworn in as such, or does he continue to serve as Mayor Pro Tempore?"

Law/Analysis

As you cited in your letter, section 5-7-190 of the South Carolina Code (2004) provides:

Immediately after any general election for the municipal council, the council shall elect from its membership a mayor pro tempore for a term of not more than two years. The mayor pro tempore shall act as mayor during the absence or disability of the mayor. If a vacancy

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occurs in the office of mayor, the mayor pro tempore shall serve as mayor until a successor is elected.

In order to interpret this provision, we must consider the rules of statutory construction. As our Supreme Court recently stated in In re Campbell, 379 S.C. 593, 599, 666 S.E.2d 908, 911 (2008):

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. To this end, the words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statutes operation. If the language of a statute is unambiguous, then the rules of statutory construction are unnecessary and the court may not impose another meaning.

(citations omitted).

Section 5-7-190 is the only statute in the South Carolina Code providing for or pertaining to the position of a mayor pro tempore. Thus, from this statute, we infer that the Legislature created the position of mayor pro tempore for the sole purpose of designating a member of the municipal council to perform the functions of the mayor if they mayor is unavailable or unable to serve out his or her term. Accordingly, the sole function of the mayor pro tempore is to serve as the mayor when a need arises.

Other jurisdictions recognize that the mayor pro tempore does not become a mayor in fact, but retains his or her status as a mayor pro tempore. See 3 McQuillin Mun. Corp. § 12.42 (3rd. ed.); Culbertson v. Moore, 196 S.W.2d 308, 310 (Ky. 1946)(finding a mayor pro tempore’s service as mayor expires upon the expiration of his office as a commission, not at the expiration of the mayor’s term of office). Based on the plain language of section 5-7-190, we agree with this conclusion. The statute provides that the mayor pro tempore “serves as” the mayor rather than stating that the mayor pro tempore becomes the mayor when a vacancy occurs. Moreover, we do not believe the mayor pro tempore technically becomes the mayor as he is not elected or appointed to the position. Rather, his or her service as mayor is by operation of law. Thus, we believe the mayor pro tempore remains in his position of mayor pro tempore and does not become the mayor. Accordingly, we do not believe the mayor pro tempore is sworn in as mayor.

Although we do not believe the mayor pro tempore becomes the mayor, we recognize the mayor pro tempore has the authority to perform all of the functions of the mayor. In a 2007 opinion, we addressed the extent of a mayor pro tempore’s authority when serving as the mayor. Op. S.C. Atty. Gen., January 29, 2007. Specifically, we considered whether the mayor pro tempore is authorized to appoint members to committees. Id. We determined that because 5-7-190 “gives the mayor pro tempore the authority to act as mayor during the mayor’s absence,” the “mayor pro tempore, in the absence of the mayor, assumes the authority and responsibilities of the mayor with

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regard to appointments.” Id. Based on this opinion, we believe serving as the mayor entitles the mayor pro tempore to exercise the authority normally held by the mayor and requires the mayor pro tempore to fulfill the responsibilities of the mayor. Thus, although we do not believe that the mayor pro tempore becomes the mayor, he or she has all of the authority and responsibilities normally held by the mayor.

Conclusion

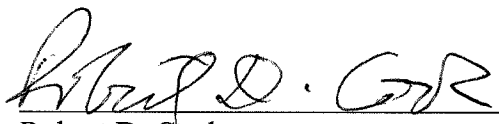
We do not believe that a mayor pro tempore becomes a mayor in fact by operation of section 5-7-190. Thus, we are of the opinion that the mayor pro tempore remains in his or her position as mayor pro tempore. However, the mayor pro tempore, pursuant to section 5-7-190, assumes all of the authority and responsibility normally assigned to the mayor.

Very truly yours,

Henry McMaster
Attorney General


By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:


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