

7075 February



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

January 25, 2001

Thomas L. Martin, Esquire
Anderson County Attorney
Post Office Box 8002
Anderson, South Carolina 29622-8002

RE: Informal Opinion

Dear Mr. Martin:

By your letter of January 23, 2001, you have requested an opinion of this Office concerning an interpretation of an Anderson County ordinance. By way of background, you provide the following information:

A recently elected member of Anderson County Council has questioned whether the referenced section of county law requires approval by the County Council of Anderson County for appointments, by council district, to Anderson County Boards (other than Committees of County Council). The Council member in question has apparently interpreted the section in question as allowing members of County Council to make district appointments to County Boards and Committees (other than Committees of County Council), which are then subject to automatic approbation by the County Council. ...

I drafted the particular code section in question, based upon a long standing but unwritten policy of Anderson County Council to affirm council district appointments (other than committees of County Council) by voice vote of County Council. At the time of drafting and subsequent enactment of the ordinance adopting the code section in question, it was the intent of Anderson County Council, as expressed to me as County Attorney, to formally state the requirement of Anderson County Council that such appointments be "affirmed" (in the sense of approved or confirmed) by the entire County Council. The language in the section referring to the lack of a requirement for an election and vote refers to the immediately preceding subsection b, which requires a formal election and voting for appointments other than appointments by council district.

In sum, you now ask which interpretation of the ordinance is correct: when positions are to be filled

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by County Council district appointment, can the Council affirm the appointment (in effect, vote to accept or reject) or must the Council automatically accept the district appointment?

The particular provision of Anderson County Ordinance Section 2-38(c)(6)(c) reads:

Appointment: When positions are to be filled by county council district appointment, no election or vote by the overall county council is required, but each appointment should be announced in public meeting for public information and record purposes and shall be affirmed by the county council by voice vote.

The confusion in interpreting this provision lies in the reconciliation of "no election or vote ... is required" with "shall be affirmed ... by voice vote."

In interpreting such a legislative enactment as an ordinance, full effect must be given to each portion of the ordinance, and apparent conflicts must be reconciled and construed harmoniously if at all possible. State ex rel. McLeod v. Nessler, 273 S.C. 371, 256 S.E.2d 419 (1979); Adams v. Clarendon County School Dist. No. 2, 270 S.C. 266, 241 S.E.2d 897 (1978). Furthermore, it is well settled that, when interpreting an ordinance, legislative intent must prevail if it can be reasonably discovered in the language used. Restaurant Row Associates v. Horry County, 327 S.C. 383, 489 S.E.2d 641 (Ct. App. 1997); Charleston County Parks and Rec. Comm'n v. Somers, 319 S.C. 65, 459 S.E.2d 841 (1995). An ordinance must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. Id.

Reading the above provision in its proper context sheds some light on the question. Immediately preceding subsection (c) on filling appointments is a provision labeled "*Election*." The *Election* provision applies when members of boards and committees are filled by the entire Council. The ordinance requires the chairperson to announce the names of all nominees, the clerk to call roll, and each Council member to cast votes equaling the number of vacancies. The nominees with the majority of votes win. By comparison, the appointments provision applies when the positions are filled by district appointment. The name of the district appointment nominee is offered to the Council to be "affirmed." The differences in procedure offer a reasonable explanation of why the phrase "no election or vote by the overall county council is required" is not inconsistent with "shall be affirmed by the county council by voice vote." The entire Council need not choose among multiple candidates and cast multiple votes, as in the *Election* provision, but must be allowed to voice an affirmation of the appointment nominee, in effect voting to accept or reject the appointment.

Although the language of the ordinance arguably leaves some room for confusion, the prior actions of the County Council before the codification of these procedures confirms this interpretation. This Office neither participates in the drafting of ordinances nor attends meetings of county councils at which an ordinance such as this would be discussed. Accordingly, we consistently defer to local authorities to interpret ordinances which were adopted at the local level for any

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additional insight or enlightenment as to the drafters' intent. Based on the information presented for our consideration and in the absence of additional information as to intent to the contrary, I would concur with your opinion that Anderson County intended to enact a procedure when positions are to be filled by County Council district appointment that requires the affirmative vote of the County Council. I also particularly concur with the conclusion and observation on page two of your letter:

The proposed interpretation, by the newly elected council member, of the section as mandating approbation by County Council would, of course, obviate the necessity of a voice vote by County Council. In other words, the voice vote by County Council would be a redundancy, since it would be non-discretionary.

For all of the foregoing, it is the opinion of this Office that when positions are to be filled by County Council district appointment, the Council must affirm the appointment, in effect, voting to accept or reject the appointee.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Susannah Cole
Assistant Attorney General