

6203 Literary



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

March 18, 1998

Thomas M. Boulware, Esquire
P.O. Box 248
Barnwell, South Carolina 29812

RE: Informal Opinion

Dear Mr. Boulware:

Your opinion request has been forwarded to me for reply. You have informed this Office that the City of Barnwell has passed an ordinance which requires employees who offer as candidates for elective public office to resign employment with the City of Barnwell. You have asked whether such an ordinance is constitutional.

Barnwell City Ordinance No. 1997-97-1 reads as follows:

BE IT ORDAINED by the City Council of the City of Barnwell,
South Carolina:

1. That no employee who offers for any elective public office shall remain an employee of the City of Barnwell.

Statutes and ordinances similar to Ordinance No. 1997-97-1 have been the subject of numerous lawsuits throughout the years. There is overwhelming support for the proposition that the government has an appropriate and substantial interest in proscribing certain political activities by public employees. Naccarati v. Wilkins TP., PA, 846 F.Supp 405 (W.D.Pa 1993). The leading case on this subject is Broadrick v. Oklahoma, 413 U.S. 601 (1973). In this case, the United States Supreme Court upheld the constitutional validity of a Oklahoma statute which restricted partisan political conduct by state civil service employees. The Court held that a state could prohibit certain public employees

Request Letter

Mr. Boulware
Page 2
March 18, 1998

from becoming "candidate[s] for nomination or election to any paid public office." Id. Many other courts have also upheld the validity of statutes and ordinances similar to Ordinance No. 1997-97-1. In doing so, these courts recognized the important governmental interest in promoting efficiency and integrity in the discharge of official duties and in insulating public employees from political pressures so as to protect their individual rights. Magill v. Lynch, 560 F.2d 22 (1st Cir. 1977); Moses v. Town of Wytheville, Virginia et al., 959 F.Supp 334 (W.D.Va 1997); Naccarati v. Wilkins TP., PA, supra; Pennsylvania ex rel. Specter v. Moak, 307 A.2d 884 (1973).

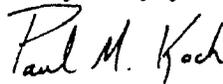
In prior opinions, this Office has addressed the validity of ordinances and policies similar to Ordinance No. 1997-97-1. In these opinions, we concluded that such ordinances and policies which restricted employees from offering for election were valid based on many of the previously cited cases. See Ops. Atty. Gen. dated August 24, 1982 and September 27, 1979.

Based on the foregoing, it is my opinion that if Ordinance No. 1997-97-1 is being offered to promote important governmental interests similar to the one discussed in the previously cited cases, it would most likely withstand a challenge to its constitutionality.

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 questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch

Assistant Attorney General