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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

April 24, 1996

J. Martin Harvey, Esquire
Allendale Town Attorney
Post Office Box 1005
Barnwell, South Carolina 29812

RE: Informal Opinion

Dear Mr. Harvey:

Thank you for your letter of April 12, 1996, to Attorney General Condon, in which you have sought an opinion as to the mayor of the Town of Allendale assuming the position of town administrator as a part of his duties as mayor and, if such is to be done, how or when the salary of the mayor might be increased to reflect the increased responsibilities. You have advised that the Town of Allendale operates under the council form of government and that the Town is not interested in changing the form of government.

You indicated that you had advised council that hiring the mayor to fill the position of town administrator would contravene S.C. Code Ann. §5-7-180. This Office has previously opined on that issue in an opinion dated September 18, 1979, a copy of which is enclosed; the opinion states:

You have requested the advice of this Office concerning whether or not you, as the Mayor of Ridgeland, South Carolina, may also serve as the administrator of Ridgeland. In my opinion, you may not do so in any official capacity.

Under the council form of municipal government, the city council, of which you as mayor are a member, is charged with the direction and supervision of the administrator, should one be hired. Section 5-11-10,

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CODE OF LAWS OF SOUTH CAROLINA, 1976. To serve as mayor and administrator would thus put you in the dual capacity of employer and employee, which public policy forbids. See also, Sec. 5-7-180, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended. I would point out, however, that, under the council form of government, there is no requirement that an administrator be hired. It would, therefore, seem possible that the council could informally designate you to oversee the day-to-day functioning of the municipal government without compensating you therefor except to reimburse you for any actual expenses incurred.

Based on the previous opinion, I am of the opinion that Town Council could informally designate the mayor to oversee the day-to-day functioning of the Town of Allendale, without additional compensation other than to reimburse the mayor for actual expenses incurred. To reach any other conclusion would contravene the common law master-servant principles and would effectively change the form of municipal government from council to mayor-council without complying with the statutory requirements for changing the form of government.

I believe that the response to the initial question makes moot the question of how to increase the mayor's salary. However, I am enclosing a copy of an opinion dated February 17, 1989, concerning the issue of increasing a mayor's salary, particularly with respect to the effective date of such increase. The relevant statute makes no distinction between or provision for the type of circumstances outlined above and the ordinary situation in which the salaries of the mayor and members of council would be increased.

This letter is an informal opinion only. It has been written by a designated Senior 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. I trust that it has satisfactorily responded to your inquiry and that you will advise if clarification or additional assistance should be needed.

With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Senior Assistant Attorney General

Enclosures