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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

August 13, 1996

The Honorable Robert W. Hayes, Jr.
Senator, District No. 15
Box 904
Rock Hill, South Carolina 29731

Re: Informal Opinion

Dear Senator Hayes:

You have asked for our opinion concerning the authority of the city council concerning the municipal court. You note that the Municipal Court System of Rock Hill has encountered numerous problems recently and the City Council wishes to know what authority it has in this matter. We are advised that the Rock Hill Municipal Court System has been under the direct control of the Human Resource Director for the past several years and recently the City Manager has assumed its control. It is also noted that "[s]ome Councilmembers feel that all court personnel should, by law, be hired by and report directly to the Council."

Law / Analysis

Municipal courts in South Carolina possess concurrent criminal jurisdiction with magistrates' courts pursuant to S.C. Code Ann. Sec. 14-25-45. The authority for the establishment of a municipal court is found at Section 14-25-5 of the Code. That Section provides as follows:

- (a) The council of each municipality in this State may, by ordinance, establish a municipal court, which shall be a part of the unified judicial system of this State, for the trial and determination of all cases within its jurisdiction. The

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ordinance shall provide for the appointment of one or more full-time or part-time judges and the appointment of a clerk.

(b) Any municipality establishing a municipal court pursuant to the provisions of this chapter shall provide facilities for the use of judicial officers in conducting trials and hearings and shall provide sufficient clerical and nonjudicial support personnel to assist the municipal judge.

(c) Any municipality may prosecute any of its cases in any magistrate court in the county in which such municipality is situate upon approval by the governing body of the county. (emphasis added).

Pursuant to Section 14-25-15, a municipal judge "shall be appointed by the council to serve for a term set by the council not to exceed four years and until his successor is appointed and qualified." Section 5-7-230 further bestows upon the council the authority to elect or appoint a municipal attorney and judges of the municipal court whose duties shall be prescribed by law. Section 14-25-35 provides that the municipal clerk or other municipal employee may be appointed to serve as clerk of the court." By Section 5-7-220, the council, under the council and mayor-council form of government or the city manager under the council-manager form "shall appoint an officer of the municipality who shall have the title of municipal clerk."

It is my understanding that Rock Hill operates under the council-manager form of government. Pursuant to Section 5-13-90,

[t]he manager shall be the chief executive officer and head of the administrative branch of the municipal government. He shall be responsible to the municipal council for the proper administration of all affairs of the municipality and to that end, subject to the provisions of this chapter, he shall:

- (1) Appoint and when necessary for the good of the municipality, remove any appointive officer or employee of the municipality and fix the salaries of such officers and employees, except as otherwise provided in this chapter or prohibited by law and except as he may authorize the head

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of the department or office to appoint and remove subordinates in such department or office;

On the other hand, Section 5-7-160 provides that

[a]ll powers of the municipality are vested in the council, except as otherwise provided by law, and the council shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the municipality by law.

In essence, your question concerns the overlap between the specific statutes which relate to the creation of the municipal court as part of the unified judicial system, City of Pickens v. Schmitz, 297 S.C. 253, 376 S.E.2d 271 (1989), and the foregoing general statutes relating to municipalities and the council-manager form of government.

Of course, the cardinal rule of statutory construction is to ascertain and effectuate legislative intent whenever possible. Bankers Trust of S.C. v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). A statute must receive a practical, reasonable and fair interpretation consonant with the purpose, design and policy of the lawmakers. Caughman v. Columbia Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). Statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative. Bell v. S.C. State Hwy. Dept., 204 S.C. 462, 30 S.E.2d 65 (1944). Generally speaking, specific laws prevail over general laws and later legislation prevails over earlier. Lloyd v. Lloyd, 295 S.C. 55, 367 S.E.2d 153 (1988).

Unquestionably, pursuant to Section 5-13-90, the city manager in the council-manager form of government possesses broad authority over city employees and personnel. In Bunting v. City of Cola., 639 F.2d 1090 (4th Cir. 1981), the Fourth Circuit Court of Appeals stated with regard to the dismissal of two police officers, that "Columbia has a council-manager form of government, and the city manager in a council-managed city is empowered under state law to dismiss any city employee "for the good of the municipality." And in Bane v. City of Cola., 480 F.Supp. 34 (D.S.C. 1979), Judge Hemphill wrote that "[t]he officers were terminated by the City Manager, who has the authority to dismiss for the good of the City." 438 F.Supp. at 38. Moreover, in Dew v. City of Florence, 279 S.C. 155, 303 S.E.2d 664 (1983), our Supreme Court stated with respect to Section 5-13-90 that "[i]t is obvious that the ultimate authority to discharge, as indicated in the handbook, and specifically delegated in the statute, is in the City Manager."

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It can certainly be argued that Section 14-25-5 creates an exception to Section 5-13-90. In other words, it could be argued that an exception to the broad authority of the City Manager with respect to personnel is the provision contained in Section 14-25-5 mandating that a municipality "shall provide sufficient clerical and nonjudicial support personnel to assist the municipal judge." Clearly, the decision as to whether or not to establish a Municipal Court System pursuant to ordinance rests with the City Council. This Office has consistently stated that in lieu of the establishment of a separate municipal court structure, municipal cases may be handled by the magistrate pursuant to a contract between the City Council and the County. See, Op. Atty. Gen., July 14, 1981. Thus, the authority to adopt an ordinance establishing a municipal court system could be deemed to include the authority in Council to establish the method for selecting nonjudicial personnel to staff such court system consistent with the municipality's obligation to "provide sufficient clerical and nonjudicial support personnel to assist the municipal judge."

On the other hand, Section 14-25-5 specifically designates the Council to provide for the appointment of full and part-time municipal judges, but such explicit language is not contained in Section 14-25-5(b) with respect to nonjudicial personnel. It is well recognized that "the enumeration of particular things excludes the idea of something else not mentioned." Pa. Nat. Mut. Cas. Ins. Co. v. Parker, 282 S.C. 546, 320 S.E.2d 458 (Ct. App. 1984).

Moreover, as referenced above, several cases have upheld the removal of police officers by the City Manager. This authority was maintained, notwithstanding the fact that Section 5-7-110 provides that "[a]ny municipality may appoint or elect as many police officers, regular or special, as may be necessary for the proper law enforcement in such municipality and proscribe their duties." Accordingly, while arguments may be made to the contrary, I believe the better reading is that the City Administrator would possess the day-to-day authority over nonjudicial personnel in the Municipal Court system. I am advised that this is the practice generally in South Carolina.

You have specifically asked whether the fact that municipal courts are part of the unified judicial system would alter the situation where, typically, the City Manager has responsibility with respect to the employment of city employees. Article V of the South Carolina Constitution creates a unified judicial system. Pursuant to Art. V, § 4, the Chief Justice of the Supreme Court "shall be the administrative head of the unified judicial system." In City of Pickens v. Schmitz, *supra*, the Supreme Court recognized that the municipal courts of South Carolina were a part of the unified judicial system. There, the Court held:

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Municipal Courts authorized by Act No. 480 [of 1980, codified as S.C. Code Ann. §§ 14-25-5 to -205] comply with the requirements of South Carolina Article V, § 1. In addition, there is no violation of equal protection.

297 S.C. at 256.

Of course, the Court has recognized that with respect to courts within the unified judicial system, such as the Probate Judge, there is placed upon the court itself "the duty and authority to determine whether the needs of the office require 'additional clerical help' or whether the best interest of the office could be served by using the State funds as a salary supplement to 'existing employees.'" Parrish v. Gilstrap, 280 S.C. 184, 312 S.E.2d 4, 6 (1984). Thus, the Court seemed to be saying in Parrish that control over a court's employees rests with the Court itself, and certainly this is the typical situation in South Carolina's other courts. See, e.g. Op. Atty. Gen., August 8, 1991 ("any decision regarding the actual hiring and discharge of these employees is a decision of an individual magistrate pursuant to Section 4-9-30(7)"). Quoting Douglas v. McLeod, 277 S.C. 76, 282 S.E.2d 604, the Parrish Court stated "Section 14 (4 and 6) of Article VIII (South Carolina Constitution) effectively withdraws administration of the judicial system from the field of local concern." Id. Indeed, courts in other jurisdictions have held that the Supreme Court's supervisory authority over courts in a unified judicial system prohibits the placement of authority over municipal court employees in the hands of city officials. Mowrer v. Rusk, 95 N.M. 48, 618 P.2d 886 (1980).

However, in light of the Supreme Court's decision in City of Pickens v. Schmitz, supra, it appears that the Court had determined that the municipal court system as established by Section 14-25-5 et seq. is consistent with Art. V and the unified judicial system. Thus, I would advise that the fact that the City Manager, as opposed to the city council, under existing statutes controls nonjudicial court personnel, is inconsistent with Article V. I cannot advise you that the fact that the General Assembly has placed the authority over nonjudicial personnel in the hands of the City Manager as opposed to the council would contravene Art. V.

Of course, the City Manager is ultimately responsible to city council. Section 5-13-70 states that "[t]he term of employment of the manager shall be at the pleasure of the council ...". Thus, the Legislature, in making the City Manager responsible to the Council has designated this form of county council supervision as well as the authority to establish the municipal court system and the power to select the municipal judges as sufficient council control and supervision. If the General Assembly desires to change the current structure, it is, of course, free to do so.

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In view of the considerable overlap between the various statute's referenced above, and the requirement of maintaining a unified judicial system, it is imperative that in this situation there must be a close working relationship and a spirit of cooperation maintained by the Council and the City Manager to resolve the problems in the Municipal Court System in Rock Hill. Otherwise, the integrity of the judicial system at the local level will be severely undermined and public confidence in the local judiciary eroded. In this regard, it is my opinion that the day-to-day authority over nonjudicial personnel rests in the hands of the City Manager, while the authority of the Council as the City's legislative body is to decide whether to have a municipal court at all, and if so, to choose the judges thereof. Ultimately, of course, city council possesses clear statutory authority to control personnel decisions through the selection, retention and supervision of its City Manager. Thus, in combination, the City Council can maintain general oversight over the Manager and the Manager can exercise day-to-day authority over the personnel. You may also wish to work with Court Administration in this matter in an effort to fully resolve these problems.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy 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 kind regards, I am

Very truly yours,



Robert D. Cook

Assistant Deputy Attorney General

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