



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

August 27, 1996

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

Re: Informal Opinion

Dear Senator Hayes:

You have asked for a follow-up to an Informal Opinion which I forwarded to you, dated August 13, 1996. Therein, the question of authority over a Municipal Court System was addressed in terms of the powers with respect thereto of City Council and the City Manager in a Council-Manager form of government. Specifically, it was stated there that:

[i]n view of the considerable overlap between the various statutes 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 non-judicial 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 also may wish to work with Court Administration in this matter in an effort to fully resolve these problems.

As a follow-up, you have asked the following additional questions:

1. Define the judicial officers of the Municipal Court, who appoints them and to whom are they responsible?
  2. What comprises non-judicial support personnel for the court and who employs them?
  3. Are the ministerial recorders, clerk of court, prosecutor, and court administrator judicial officers of the Municipal Court?
  4. We have about 2600 jury trials on the docket. What responsibilities belong to the City Council?
1. Define the judicial officers of the Municipal Court, who appoints them and to whom are they responsible?

As referenced, in my August 13 Informal Opinion, S.C. Code Ann. Sec. 14-25-5(a) authorizes that the City 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 ordinance shall provide for the appointment of one or more full-time or part-time judges and the appointment of a clerk.

Section 14-25-15 further provides:

[e]ach municipal judge shall be appointed by the council for a term set by the council not to exceed four years and until his successor is appointed and qualified. His compensation shall be fixed by the council. Before entering upon the discharge of the duties of his office, each judge shall

take and subscribe the oath of office prescribed by Article VI, Section 5, of the South Carolina Constitution. No municipal judge who is admitted to practice in the courts of this State shall practice law in the municipal court for which he is appointed.

Section 14-25-25 also states:

[a] municipal judge shall not be required to be a resident of the municipality by whom he is employed. A municipality may contract with any other municipality in the county or with the county governing body to employ the municipal judge of the other municipality or a magistrate to preside over its court.

In case of a vacancy in the office of municipal judge, a successor shall be appointed in the manner of original appointment for the unexpired term. In case of the temporary absence, sickness, or disability of a municipal judge, the court shall be held by a judge of another municipality or by a practicing attorney or some other person who has received training or experience in municipal court procedure, who shall be designated by the mayor and take the prescribed oath of office before entering upon his duties.

Furthermore, Section 5-7-230 provides that "[t]he city council may elect or appoint a municipal attorney and a judge or judges of the municipal court, whose duties shall be as prescribed by law."

In addition, Section 14-25-115 authorizes the establishment of the office of ministerial recorder in a municipality. That Section reads as follows:

[t]he council of any municipality may establish the office of ministerial recorder and appoint one or more full-time or part-time ministerial recorders, who shall hold office at the pleasure of the council. Before entering upon the discharge of the duties of the office of ministerial recorder, the person appointed shall take and subscribe the prescribed oath of office and shall be certified by the municipal judge as having been instructed in the proper method of issuing warrants.

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Ministerial recorders shall have the power to issue summonses, subpoenas, arrest warrants, and search warrants in all cases arising under the ordinances of the municipality, and in criminal cases as are now conferred by law upon magistrates, but shall have no other judicial power.

As emphasized in the August 13 Informal Opinion, the municipal courts of South Carolina are part of this State's unified judicial system. Such courts possess jurisdiction to try all cases arising under the ordinances of the municipality as well as having "all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates."

You specially question who are the "judicial officers of the Municipal Court, who appoints them and to whom are they responsible." Generally speaking, only those who exercise judicial functions are judicial officers. Adams v. State, 17 N.E.2d 84 (Ind. 1938). While a "judicial officer, in the popular sense may refer to an officer or employee of the court, in the legal sense the term refers only to the individual who determines causes between parties." Hitt v. State, 181 So. 331 (Miss. 1938). Clerks of court are typically not deemed judicial officers in this sense. People ex rel Lipshitz v. Bessinger, 75 N.Y.S.2d 392 (1947). The term "judicial officer" often refers to the judge and not court employees. U.S. v. Heller, 957 F.2d 26 (1st Cir. 1992).

Municipal judges are deemed to be judicial officers, Farragut v. City of Tampa, 22 So.2d 645 (Fla. 1945). Moreover, pursuant to SCACR 502(2)(b), the term "judge" is defined for purposes of the Code of Judicial Conduct. That provision states that the term "judge"

means a Justice or Judge of any appellate court or any trial court or a magistrate or referee, or master in equity, or probate judges, or recorder and official or officers whose actions may be ultimately appealed to or reviewed by the Supreme Court, provided, however, members of administrative or members of governing bodies of political subdivisions are hereby excluded.

Thus, in South Carolina, judicial officers are the judges who make up the State's unified judicial system and who exercise the judicial function as part thereof.

Accordingly, based upon this analysis, in the context of the municipal court, the "judicial officers" are the municipal judges themselves, whether full-time or part-time, whose offices are created pursuant to the foregoing statutes, referenced above. Such

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municipal judges are, as stated, appointed by the City Council, and their terms, not to exceed four years, are set by Council. See, Section 14-25-15. The compensation of such municipal judges is established by the Council. Council fills the vacancies in the offices of Municipal Judge. Thus, in the sense of appointment, reappointment, filling of vacancies, compensation, length of term, etc., such Municipal Judges are completely "responsible" to City Council.

However, it must also be remembered that Article V of the South Carolina Constitution places the Municipal Courts, including the Municipal Judges thereof, under the auspices and control of the Supreme Court of South Carolina. Pursuant to its Article V authority, the Supreme Court disciplines municipal judges for violations of the Code of Judicial Conduct. See e.g., In the Matter of Martin, \_\_\_\_\_ S.C. \_\_\_\_\_, 434 S.E.2d 262 (1993); In the Matter of Derrick, 301 S.C. 367, 352 S.Ed.2d 180 (1990). And the Supreme Court maintains oversight over the Municipal Court and its judges as it does any other court in the unified judicial system. That being said, however, with respect to the creation of municipal judge positions (full or part-time, assistant or otherwise), in terms of filling such positions or a vacancy therein, in reappointment of judges or selecting someone else, City Council possesses broad statutory authority in this regard.

Moreover, as noted above, the office of ministerial recorder is likewise. The person who occupies the office of ministerial recorder is a "judicial officer" because a ministerial recorder exercises a judicial function. See, State v. Sachs, 264 S.C. 541, 216 S.E.2d 501 (1975) [ministerial recorder fully qualified as a neutral and detached magistrate]. As is the municipal judge, the ministerial recorder is responsible to City Council in the sense of creation, appointment, reappointment, etc. Rather than having a fixed term, the recorder serves at the pleasure of Council. Just as are municipal judges, recorders are part of the unified judicial system, see, Act. No. 480 of 1980 [ministerial recorder part of Chapter entitled "Municipal Courts" which is expressly made a part of the unified judicial system by Act 480 of 1980]; SCACR 502(b)(2) [recorder included in definition of "judge"].

Thus, the answer to your first question is that the "judicial officers" of the municipal court are the municipal judges (full or part-time) and the ministerial recorders (if any). Such officers are appointed by City Council and are responsible to Council, keeping in mind the caveat that these officers are also part of the judicial system and thus are also responsible to the Supreme Court pursuant to Article V of the South Carolina Constitution.

2. What comprises non-judicial support personnel for the court and who employs them?

In my judgment, non-judicial support personnel would include all those persons who are not judges, defined above (municipal court judges and ministerial recorders) and who assist the court through support functions. In this regard, typically, one would be speaking of secretaries, process-servers, clerks, bailiffs, court administrator, stenographers, administrative personnel and other support staff. If these individuals are employed by the City and there is no specific statute authorizing their appointment or employment by Council or the Court itself (and here I know of no other statutes)<sup>1</sup> it would by my opinion, as stated in the August 13, Informal Opinion that such individuals would be employed by the City Manager pursuant to Section 5-13-90.

3. Are the ministerial recorders, clerk of court, prosecutor and court administrator judicial officers of the Municipal Court?

The Ministerial Recorder has been discussed above. As noted, this person is a judicial officer and is appointed by Council and serves at the pleasure of Council.

The clerk of the Municipal Court is not a judicial officer, based upon the foregoing definitions cited above. Section 14-25-5(a) provides that the ordinance creating the Municipal Court shall provide for "the appointment of a clerk." Section 14-25-35 also states that the municipal clerk or "other municipal employee" may be appointed to serve as clerk of the court and pursuant to the council-manager form of government, the city manager appoints the clerk of the town. Thus, although, it is not altogether clear, it would be my opinion that the clerk of court, as a non-judicial officer, is appointed and responsible to the City Manager as other municipal employees are. The same would be true for the Court Administrator which is not a statutorily created position, but would be a position created by the municipality itself. Under the Council-Manager form of government, Section 5-13-90 controls and thus the Court Administrator is responsible to the City Manager.

The position of prosecutor is more problematical. Typically, the prosecutor in the Municipal Court is the Town Attorney which, pursuant to Section 5-7-230 is employed

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<sup>1</sup> In the August 13, Informal Opinion, I discussed the fact that, typically, court support personnel are responsible to the court itself, but that such does not appear to be the case with respect to the Municipal Courts in South Carolina. I am unaware of the reasons the General Assembly has chosen to treat municipal courts differently. See, Informal Opinion, August 13, 1996.

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by the Council. Presumably however, City Council could create a separate position of prosecutor just as it could with respect to the position of Court Administrator; if the Council does this, rather than using the Town Attorney, then pursuant to Section 5-13-90 such prosecuting official would be responsible to the City Manager.

4. We have about 2600 jury trials on the docket. What responsibilities belong to the City Council?

City Council as the legislative body for the town is ultimately responsible. It is Council which decides whether to have a Municipal Court System. It is Council which could, if it so desires, decide to contract, pursuant to Section 14-25-25,

... with any other municipality in the county or with the county governing body to employ the municipal judge of the other municipality or a magistrate to preside over its court.

Moreover, Section 14-25-5(c) permits a municipality to " ... 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.

Thus, if City Council determines that the backlog of cases before its Municipal Court System is too great, it has broad statutory discretion and responsibility to remedy the situation. It can contract with the county or another municipality for assistance. I am enclosing for your information an Opinion, dated July 14, 1981 wherein we concluded that the Beaufort Township Magistrate could handle City of Beaufort municipal court matters on some type of consolidation basis through an agreement between the City and County.

Moreover, City Council, as noted above, possesses broad discretion in generally administering the Municipal Court System. Council determines the number of municipal judges, full-time and part-time. Council also has broad authority with respect to ministerial recorders. Moreover, Council, as the funding authority for the city, has broad authority to establish by ordinance the Municipal Court System. Accordingly, Council possesses considerable discretion in the structure, make-up, organization and administration of the court system through the local legislative process.

Again, I would reiterate that the authority given by the General Assembly in this area is ample to remedy the situation. Council possesses clear authority over the municipal judges and ministerial recorders in the sense of creation of positions, funding, appointment, reappointment, etc. Council also retains broad legislative policy-making authority in terms of the structure and organization of its Municipal Court System as well

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as the authority to contract with the other municipalities or the county to assist it. With respect to those who are employed to support the Court and who are not judges (secretaries, clerk, bailiff, support staff, administrative personnel etc.), these persons are deemed non-judicial support personnel and under the Council-Manager form of government are responsible to and employed by the City Manager. Along these general lines, I would again urge cooperation and a close working relationship to 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

RDC/ph  
Enclosure