

# The State of South Carolina



## Office of the Attorney General

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October 18, 1988

Kenneth E. Merriman, Esquire  
Quinby Town Attorney  
Post Office Box 402  
Florence, South Carolina 29503

Dear Mr. Merriman:

By your letter of October 3, 1988, you have requested an opinion as to whether, under the facts to be described below, the Procurement Ordinance of the Town of Quinby has been adopted. For the reasons as stated below, we concur with your conclusion that the Procurement Ordinance has been adopted by the Town Council of the Town of Quinby.

### Facts

As provided in your letter, we understand the facts relative to adoption of the Procurement Ordinance to be as follows.

At a regularly held council meeting on March 7, 1988, a Procurement Ordinance for the Town of Quinby was introduced for first reading. All council members and the mayor voted in favor of the ordinance. Some discussion was had at the meeting concerning having a special council meeting later in the month to adopt the Procurement Ordinance and other ordinance that were pending but no formal action was taken in that regard.

On March 27, 1988, after public notice and notice to all council members and the mayor, a special council meeting was held attended by three of the four council members. The mayor was not present. The Procurement Ordinance was given second reading and passed at the special meeting.

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At the April 4, 1988, regular council meeting all four council members were present. The mayor was not present. The minutes of the March 7, 1988, council meeting and the March 27, 1988, council meeting were approved.

At the June 6, 1988, regular council meeting with three (3) council members present and the mayor present, the mayor objected to the passage of the Procurement Ordinance on the basis that the March 27, 1988, special council meeting had not been called by him and that the meeting was therefore not authorized.

At the July 11, 1988, regular council meeting, in order to resolve the issue of the March 27, 1988, special meeting the Procurement Ordinance was again read for a second reading and passed with all four (4) councilmen voting yes and the mayor voting nay.

#### Quinby Town Code

In Section 2-6 of the Quinby Town Code is the following provision:

The regular meeting of the council shall be held the first Monday of each month at 7:00 p.m. Special meetings of the council may be called by the mayor in case of emergency or when in his judgment, the good of the town requires it. The mayor shall call extra or special meetings when requested to do so in writing by three (3) members.

#### Applicable State Law

Section 5-7-250(a), Code of Laws of South Carolina (1976), provides the following:

The council, after public notice shall meet regularly at least once in every month at such times and places as the council may prescribe by rule. Special meetings may be held on the call of the mayor or of a majority of the members.

The Town council consists of the mayor and four council members. According to this provision of state law, a majority, or three, of these five members could call a special meeting of the council.

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### Discussion

As you succinctly state in your letter,

If it were interpreted that Section 2-6 of the Town code is the only means by which a special town council meeting can be called such an interpretation would have the effect of allowing the Town Code section to supersede the state statute. The town code cannot supersede the state statute and therefore the interpretation that will find both sections to stand is favored.

Your reasoning is in accordance with such cases as Central Realty Corp. v. Allison, 218 S.C. 435, 63 S.E.2d 153 (1951) and Law v. City of Spartanburg, 148 S.C. 229, 146 S.E. 12 (1928), which hold that a municipal ordinance which conflicts with a state law is void.

As you point out, it is possible to construe the Town Code provision and Section 5-7-250(a) of the South Carolina Code together to a certain degree. Each would provide a means for calling a special meeting of council. As long as the means used complies either with the Town Code or with Section 5-7-250(a) of the South Carolina Code, a special meeting called pursuant thereto would be validly called. The Town Code requires three members to request a special meeting in writing, while Section 5-7-250(a) permits a special meeting to be called by majority of council members, which in the case of the Town of Quinby is also three members, though a request in writing is not required by the statute.

Applying the foregoing to the adoption of the Procurement Ordinance, which by Section 5-7-270 of the Code requires two readings on two separate days with at least six days between each reading, the following conclusion may thus be reached: the Procurement Ordinance was introduced for first reading on March 7, 1988 at a regular meeting. From the facts as stated in your letter and detailed above, it appears that second reading was held on March 27, 1988, at a special meeting duly called and noticed. 1/ In the alternative, we concur with your conclusion that if there was any error in the action taken on March 27, 1988, that error would have been corrected at the meeting on July 11, 1988. In either event, the Procurement Ordinance has had the necessary second reading.

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1/ Because the Attorney General is not empowered to make factual determinations or investigate facts as presented to this Office, we assume for purposes of this opinion that all procedural requirements for adoption of the ordinance were followed at the March 27, 1988, meeting.

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We trust that the foregoing has adequately responded to your inquiry. If we may assist you further, please advise.

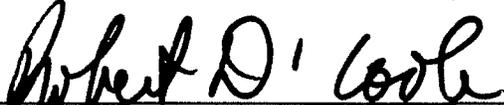
With kindest regards, I am

Sincerely,

*Patricia D. Petway*  
Patricia D. Petway  
Assistant Attorney General

PDP:sds

REVIEWED AND APPROVED BY:

  
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ROBERT D. COOK  
EXECUTIVE ASSISTANT FOR OPINIONS