



ALAN WILSON  
ATTORNEY GENERAL

May 5, 2014

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Dear Mr. Gaines:

Attorney General Alan Wilson has referred your letter dated January 10, 2014 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

**Issue:** Pursuant to South Carolina Code § 5-7-170 may a city council in a council form of municipal government adopt an ordinance changing the salary of its members to a date later than the commencement date of the terms of two or more members elected at the next general election following the adoption of the ordinance changing the salaries or does the change have to occur at the commencement date of the terms of two or more members elected at the next general election following the adoption of the ordinance?

**Short Answer:** This Office believes more likely than not that a court will find the salaries must be changed on the commencement date of the terms of two or more members elected at the next general election following the adoption of an ordinance changing the salaries of the council members.

**Law/Analysis:**

By way of background, it is this Office's understanding the City of Columbia is organized in the council-manager form of municipal government pursuant to S.C. Code § 5-5-10. Op. S.C. Atty. Gen., 2010 WL 2320800 (May 6, 2010). As a background on municipal government, South Carolina Code § 5-13-10 states:

Except as specifically provided for in this Chapter the structure, organization, powers, duties, functions and responsibilities of municipal government under the council-manager form shall be as prescribed in Chapter 7.

(1976 Code, as amended). Chapter 7 of Title 5 of the South Carolina Code of laws applies to all forms of municipal government except where otherwise stated in Chapters 9, 11, and 13. S.C. Code § 5-7-10. As the first statute in Chapter 7 states:

The provisions of this chapter provide for the structure, organization, powers, duties, functions and responsibilities of municipalities under all forms of municipal

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government provided for in Chapters 9, 11 and 13 unless otherwise specifically provided for in those chapters. The powers of a municipality shall be liberally construed in favor of the municipality and the specific mention of particular powers shall not be construed as limiting in any manner the general powers of such municipalities.

S.C. Code § 5-7-10 (1976 Code, as amended). South Carolina Code § 5-7-170 states:

The council may determine the annual salary of its members by ordinance; *provided*, that an ordinance **establishing or increasing such salaries shall not become effective until the commencement date of the terms of two or more members elected at the next general election following the adoption of the ordinance, at which time it will become effective for all members** whether or not they were elected in such election. The mayor and council members may also receive payment for actual expenses incurred in the performance of their official duties within limitations prescribed by ordinance.

S.C. Code § 5-7-170 (1976 Code, as amended) (emphasis added).

As a background regarding statutory interpretation, the cardinal rule of statutory construction is to ascertain the intent of the Legislature and to accomplish that intent. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003). The true aim and intention of the Legislature controls the literal meaning of a statute. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). The historical background and circumstances at the time a statute was passed can be used to assist in interpreting a statute. Id. An entire statute's interpretation must be "practical, reasonable, and fair" and consistent with the purpose, plan and reasoning behind its making. Id. at 816. Statutes are to be interpreted with a "sensible construction," and a "literal application of language which leads to absurd consequences should be avoided whenever a reasonable application can be given consistent with the legislative purpose." U.S. v. Rippetoe, 178 F.2d 735, 737 (4th Cir. 1950). Like a court, this Office looks at the plain meaning of the words, rather than analyzing statutes within the same subject matter when the meaning of the statute appears to be clear and unambiguous. Sloan v. SC Board of Physical Therapy Exam., 370 S.C. 452, 636 S.E.2d 598 (2006). The dominant factor concerning statutory construction is the intent of the Legislature, not the language used. Spartanburg Sanitary Sewer Dist. v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984) (citing Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956)).

Based on a plain reading of South Carolina Code § 5-7-170 and by dissecting the statute, it reads:

[any establishment or increase of a salary for a council member] shall not become effective until the commencement date ... at which time it will become effective for all members.

S.C. Code § 5-7-170. The language "at which time it will become effective" seems to indicate a clear, mandatory, not optional, intent of going into effect at the commencement date. This Office previously opined concerning this statute when we stated we believed South Carolina Code § 5-7-170 specifically provided for the effective date of any change or increase in the salaries and that date was a restriction on the salary change. Op. S.C. Atty. Gen., 1990 WL 599252 (April 3, 1990). This Office also previously

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opined that any increase in a mayor's salary should be effective at the effective date specified in South Carolina Code § 5-7-170. That opinion stated:

Prior to amendment in 1979, Section 5-7-170 provided the following in pertinent part:

The council may determine the annual salary of the mayor and councilmen by ordinance, but no ordinance changing such salary shall become effective until the date of commencement of the terms of councilmen elected at the next general election following the change....

After amendment by Act No. 98, 1979 Acts and Joint Resolutions, the pertinent portion of Section 5-7-170 now provides:

The council may determine the annual salary of its members by ordinance; provided, that an ordinance establishing or increasing such salaries shall not become effective until the commencement date of the terms of two or more members elected at the next general election following the adoption of the ordinance, at which time it will become effective for all members whether or not they were elected in such election....

In construing a statute, the primary obligation of the courts and this Office is to determine and effectuate legislative intent if at all possible. Anders v. South Carolina Parole and Community Corrections Board, 279 S.C. 206, 305 S.E.2d 229 (1983). The title or caption of an act may be considered in aid of the construction of the act. University of South Carolina v. Elliott, 248 S.C. 218, 149 S.E.2d 433 (1966). The title of Act No. 98 of 1979 provides the following:

An Act To Amend Section 5-7-170, Code Of Laws Of South Carolina, 1976, Relating To Salaries And Expenses Of Mayors And Council Members, So As To Correspond The Method Of Establishing Compensation Of Municipal Officials To The Procedure Used In Establishing Compensation For Members Of County Councils.

The caption then appearing in the act reads:

Salary of mayor and council members[.]

Thus it would appear from the title and caption that the General Assembly intended to place the mayor in the same position as members of council with respect to determination of salary and its effective date.

Op. S.C. Atty. Gen., 1989 WL 406105 (February 17, 1989).<sup>1</sup> The effective date referred to in the prior opinions and the effective date implied from statutory construction are the same. Both suggest the effective date for all members is the commencement date of two or more members elected at the next general election following the adoption of an ordinance changing the salaries. However, you may also want to check with the State Ethics Commission or seek a declaratory judgment from a court on this matter, as only a court of law may interpret statutes and make such determinations. S.C. Code § 15-53-20, et al.<sup>2</sup>

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<sup>1</sup> Please note before the 1979 amendment to the statute, this Office opined that salary changes were effective at commencement of the election of council members as they were elected. Op. S.C. Atty. Gen., 1977 WL 24680 (October 31, 1977).

<sup>2</sup> This Office has not examined any City of Columbia ordinances for this opinion.

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**Conclusion:** This Office believes it is more likely than not that a court will find the salaries of council members must be changed on the commencement date of the terms of two or more members elected at the next general election following the adoption of an ordinance changing the salaries of the council members. However, this Office is only issuing a legal opinion based on the current law at this time. Until a court or the Legislature specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,



Anita S. Fair  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General