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The State of South Carolina



Office of the Attorney General

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August 4, 1986

Robert C. Lake, Jr., Esquire
Post Office Box 328
Whitmire, South Carolina 29178

Dear Mr. Lake:

You have asked for the opinion of this Office on the following questions:

1. Whether a mayor and/or councilman may serve on a city council and also be employed concurrently by the municipality.
2. Whether a mayor and/or councilman may serve on a city council concurrently with his or her spouse being employed by the municipality.

Each of your questions will be addressed individually, as follows.

Question 1

Employment of a mayor or member of council by the same municipality is addressed by Section 5-7-180, Code of Laws of South Carolina, which provides:

Except where authorized by law, no mayor or councilman shall hold any other municipal office or employment while serving the term for which he was elected.

This Code section has been interpreted by this Office in previous opinions; enclosed please find opinions dated June 19, 1978; August 8, 1979; and September 7, 1982, which opinions conclude that a mayor or council members would be prohibited

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from holding other municipal office or employment during the term for which he was elected. 1/

In the event that employment might be construed as an independent contract, an opinion dated May 21, 1984, enclosed, discusses problems inherent in that type of work relationship. Considerations under the State Ethics Act and master-servant problems are also discussed therein.

Question 2

Propriety of the employment by a municipality of a spouse of a mayor or councilman is your second question. To give a definitive answer, additional information would be needed; for instance, many municipalities have a nepotism ordinance. Too, the fact that the spouse was employed prior to the commencement of the term of the mayor or councilman must be considered.

Nepotism is prohibited, at the state government level at least, by Section 8-5-10 of the Code, which provides:

It shall be unlawful for any person at the head of any department of this government to appoint to any office or position of trust or emolument under his control or management any person related or connected with him by consanguinity or affinity within the sixth degree.

This Office has traditionally advised that the nepotism statute applies to state departments only and not to political subdivisions such as cities or counties. Op. Atty. Gen. No. 1681, dated May 26, 1964, enclosed. But see Bladon v. Coleman, 285 S.C. 472, 330 S.E.2d 298 (1985), enclosed.

As noted, there are other considerations. For example, if the spouse had been employed prior to the mayor or councilman taking office, the nepotism statute would not be applicable. A similar situation was discussed in Opinion No. 79-18, dated February 1, 1979, enclosed. Too, nepotism may be found to exist under a city ordinance independent of the state statute; see Op. Atty. Gen. dated June 11, 1985, enclosed.

1/ For a similar statute particularly applicable to the council-manager form of municipal government, see Section 5-13-40(a) of the Code.

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Even in situations where nepotism does not exist, the mayor or councilman would be required to follow the State Ethics Act in the event he should be called upon to discuss or act on a matter involving his/her employed spouse. The particularly applicable provisions are discussed in the enclosed opinion dated May 21, 1984. For further guidance on the Ethics Act, the concerned individual may wish to consult the State Ethics Commission.

We trust that the foregoing has given you the guidance you needed. If we may provide clarification or additional assistance, please advise.

Sincerely,

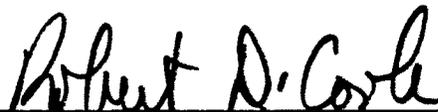
Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

FDP/an

Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions