



9799-9249

ALAN WILSON
ATTORNEY GENERAL

November 18, 2014

The Honorable Mark N. Willis
House District No. 16
326B Blatt Building
Columbia, SC 29201

Dear Representative Willis:

By your letter dated June 17th of this year you have asked, on behalf of a constituent, for the opinion of this Office concerning “the actions of the Simpsonville City Council” in “demoting Police Chief Steve Moore and reinstating . . . [former police chief Keith] Grounsell . . . during a February 25, 2014, council meeting.” Specifically, we understand your request as asking “how the rule of law applies to this matter” and whether city council had “authority” to undertake the actions that are the subject of your opinion request. Our response follows.

Law/Analysis

Initially we note that this Office, unlike a court, which can subpoena witnesses and take testimony under oath, is ill-equipped to investigate and determine factual questions. See Op. S.C. Att’y Gen., 2013 WL 3479877 (June 26, 2013) (“[T]his Office does not have the authority of a court or other fact-finding body, and therefore, it is unable to adjudicate or investigate factual questions.”); Op. S.C. Att’y Gen., 2013 WL 3479876 (June 26, 2013) (explaining this Office does not investigate facts, but instead only issues legal opinions); Op. S.C. Att’y Gen., 2013 WL 861299 (February 26, 2013) (“We have repeatedly stated that, because this Office does not have the authority of a court or other fact-finding body, we are not able, in a legal opinion, to adjudicate or investigate factual questions.”). Additionally, this Office will not review policy decisions made by institutions vested with the authority to do so. Op. S.C. Att’y Gen., 2011 WL 2214062 (May 11, 2011). “Instead, when issuing an advisory opinion on a matter such as this, we are confined to a discussion of the law controlling the legal questions contained within your letter.” Op. S.C. Att’y Gen., 2014 WL 2619140 (May 30, 2014). With this in mind, we will now address the legal issues raised in your request which we believe relates to three distinct questions: (1) may a city council, operating under a council form of government, rescind and effectively demote its interim police chief to a role the officer previously held prior to being appointed to the office of police chief; (2) may a city council operating under a council form of government create a new office for such an individual; and (3) may a city council operating under a council form of government rescind a prior decision of the council terminating an officer—in this case a police chief. As explained below, we believe that it can.

1. City Council's Authority to Effectively Demote its' Police Chief

In reviewing the constituent e-mail attached to your request letter, we interpret your first question as asking whether a city council such as Simpsonville, which operates under a council form of government, may rescind and effectively demote its' interim police chief to a position the officer previously occupied prior to his interim appointment to the office of chief. We believe that it can.

“A municipal council, like other legislative bodies, has a right to reconsider, under parliamentary rules, its votes and action upon questions rightfully pending before it and rescind its previous action.” People ex rel. McMahon v. Davis, 284 Ill. 439, 443, 120 N.E. 326, 328 (1918) (citing Jersey City v. State, 30 N.J. Law, 521; Higgins v. Curtis, 39 Kan. 283, 18 Pac. 207; Tuell v. Meacham Construction Co., 145 Ky. 181, 140 S.W. 159 Ann. Cas. 1913B, 802). In McMahon, the Illinois Supreme Court considered the question of whether a city council was authorized to reconsider appointments previously made by the council. In concluding that it did, the Court found that because state law vested city council with the authority to adopt its' own parliamentary rules (in this case Roberts' Rules of Order) so long as the council followed parliamentary rules regarding reconsideration, the council possessed the authority to rescind the appointments at issue. Id. at 449, 120 N.E. at 329-30; see also 89 A.L.R. 132 (2014 Cumm. Supp.) (“Where the rules governing a collective body at the time of the appointment of an officer provide for the reconsideration of matters passed upon it, it is generally held that the appointment is subject to reconsideration upon the conditions and within the time provided for in such rules.”).

Here, we believe the rule from McMahon applies. Specifically, because city council has authority to adopt its own parliamentary rules and has in fact done so,¹ we believe that, so long as city council followed these rules in rescinding its previous appointment in the issue at hand—a factual issue—city council possessed the authority to rescind its prior order appointing the officer at issue to the office of chief.² Id. at 449, 120 N.E. at 329-30. Indeed, it is clear that pursuant to both state and municipal law, city council possesses the general authority to hire and fire appointed officers such as a chief of police. See S.C. Code Ann. § 5-7-160 (2004) (“All 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.”); S.C. Code Ann. § 5-11-30 (2004) (“All

¹ See S.C. Code § 5-7-250(b) (2004) (“The council shall determine its own rules and order of business and shall provide for keeping minutes of its proceedings which shall be a public record.”); City of Simpsonville Code of Ord., Sec. 2-63 (1995) (explaining that unless otherwise required by law or ordinance, council proceedings are governed by “Robert’s Rules of Order, Newly Revised,” with the city attorney acting as parliamentarian).

² While the question of whether city council followed its parliamentary rules in the specific instance mentioned in the constituent letter is a question of fact, it is notable that neither the parliamentarian, nor any of the council members suggested the motion to rescind was out of order.

legislative and administrative powers of the municipality and the determination of all matters of policy shall be vested in the municipal council.”); City of Simpsonville Code of Ord., Sec. 2-131 (1995) (“The council may create and establish city offices . . . as they may deem proper for the orderly and efficient government of the city.”); City of Simpsonville Code of Ord., Sec. 2-132 (1995) (“*All appointed officers and employees shall serve at the pleasure of the appointing authority.*”) (emphasis added). As a result, because the law generally indicates city council possesses the authority to rescind an appointment and in any event, Simpsonville municipal law explains an appointed officer such as the chief of police serves “at the pleasure of the appointing authority” we believe, absent a finding council did not follow its internal parliamentary rules regarding reconsideration of an appointment, that city council possesses authority to do so. See Op. S.C. Att’y Gen., 1963 WL 11099 (March 5, 1963) (concluding that, as a general matter, city council may hire or fire an appointed official by a majority vote); Ross v. Life Ins. Co. of Va., 273 S.C. 764, 765, 259 S.E.2d 814, 815 (1979) (concluding South Carolina recognizes the general rule that unless stated otherwise, employment is at-will and can be terminated for any reason or no reason at all). Accordingly, it appears that under the circumstances mentioned in your letter, city council may rescind and effectively demote its’ interim police chief to the position the officer previously occupied prior to his interim appointment to the office of chief.

2. City Council’s Authority to Create a New Office

In reviewing the constituent e-mail attached to your request letter we interpret your second question as asking whether a city council operating under a council form of government may create a new office. We believe that it can.

Both South Carolina state law and Simpsonville municipal law³ vest legislative and administrative power of the municipality regarding all matters of policy in municipal council. See S.C. Code Ann. § 5-11-30 (2004) (“All legislative and administrative powers of the municipality and the determination of all matters of policy shall be vested in the municipal council.”); City of Simpsonville Code of Ord. Sec. 2-31 (“Except as otherwise provided, all powers of the city and the determination of all matters of policy shall be vested in the council.”). These powers extend to council’s authority to create offices and prescribe the functions of the officers occupying such an office. See S.C. Code Ann. § 5-11-40(a) (2004) (explaining city council “may establish municipal departments, offices or agencies in addition to those created by Chapters 1 through 17 and may prescribe the functions of all departments, offices and agencies.”); City of Simpsonville Code of Ord., Sec. 2-131 (stating city council has the authority to “create and establish city offices . . . as they may deem proper for the orderly and efficient government of the city.”). As a result, city council, both under state and municipal law, is

³ As indicated above, Simpsonville operates under a council form of government. See City of Simpsonville Code of Ord. Sec. 2, Art. II (asterisk referencing the adoption of the council form of government and citing Section 5-11-10 et seq. of the South Carolina Code).

empowered to create a new office such as the office of deputy chief and therefore did not act illegally in creating such an office.

3. City Council's Authority to Rescind its' Previous Termination

In reviewing the constituent e-mail attached to your request letter we interpret your third question as inquiring into whether a city council operating under a council form of government may rescind a prior decision of the council terminating an officer—in this case a police chief. We believe that it can.

As stated above in response to question one, because a legislative body has a right to reconsider its prior decisions under parliamentary rules, it follows that actions taken by the body may be rescinded. See McMahan, 284 Ill. at 443, 120 N.E. at 328 (“A municipal council, like other legislative bodies, has a right to reconsider, under parliamentary rules, its votes and action upon questions rightfully pending before it and rescind its previous action.”). In light of this, we reiterate our conclusion from the first question and find that as long as city council followed its parliamentary rules regarding reconsideration of its previous action—in this case the decision to terminate the previous police chief—city council possessed the authority to rescind its prior action of terminating its previous police chief.⁴ Thus, so long as city council acted within the scope of its parliamentary rules, city council would possess the authority to rescind its prior action terminating the previous police chief under the rubric of McMahan.

Conclusion

In conclusion, it is the opinion of this Office that a city council operating under a council form of government may, under these facts, be able to effectively demote its interim police chief by rescinding its prior decision appointing the individual at issue to the office of police chief so long as the council's parliamentary rules permit the council to act in such a fashion. Further, we believe that city council, pursuant to both state and municipal law, may create a new office and move the individual who was effectively demoted by the rescission of the previous order, into the newly created office. Finally, it is this Office's position that a city council operating under a council form of government may also rescind its prior decision terminating its previous police chief so long as the council's decision to reconsider its prior decision regarding termination is consistent with the parliamentary rules regarding reconsideration.

⁴ However, as is the case with question one, the question of whether city council followed its parliamentary rules regarding reconsideration in this instance is a factual question and is therefore outside of the scope of an advisory opinion. See Op. S.C. Att'y Gen., 2013 WL 3479876 (June 26, 2013) (explaining this Office does not investigate facts, but instead only issues legal opinions). That said, we note that neither the parliamentarian, nor city council argued the motion was out of order.

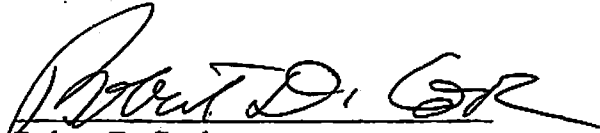
The Honorable Mark N. Willis
Page 5
November 18, 2014

Sincerely,



Brendan McDonald
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REVIEWED AND APPROVED BY:



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