

1983 WL 181747 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 14, 1983

*1 The Honorable Clifton J. Jefferson
Mayor
Town of Lynchburg
Office of the Mayor
Lynchburg, South Carolina 29080

Dear Mayor Jefferson:

Attorney General Medlock asked me to respond to your letter to him of January 3, 1983. As I understand your letter, you have asked whether certain actions by the Lynchburg Town Council were within the law. More specifically, you describe those actions as follows:

1. The Council has taken upon themselves to institute the change of government without applying for a new State Charter.
2. The Council has called several meetings without the knowledge of the Mayor.
3. The Council met illegally and passed a resolution that would prohibit the Mayor from signing checks or purchase orders.
4. The Council is proposing to act as both the legislative and the administrative arm of the Township, with no regard to the Office of Mayor.

These matters will be discussed in the same order as you stated them.

1. [Section 5-5-30, Code of Laws of South Carolina](#), 1976, provides, in pertinent part, as follows:

The ordinance selecting the form of government shall be filed in the office of the Secretary of State who shall issue an appropriate certificate of incorporation to the municipality.

This language appears to require the ordinance on the original selection of a form of government by a municipality and all subsequent ordinances changing that form to be filed with the Secretary of State so that a revised certificate of incorporation can be issued. I understand that the Secretary of State's office has interpreted [Section 5-5-30](#) in the same way.

2. [Section 5-7-250\(a\)](#) provides that:

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.

Furthermore, the Freedom of Information Act requires meetings of municipal councils to be open to the public, except in certain situations where the Act allows for closed meetings, and requires certain measures be taken to give public notice of municipal council meetings. See, [Sections 30-4-60, 30-4-70, 30-4-80, Code, 1982 Cumulative Supplement](#). In addition, the mayor as a member of the town council should receive prior notice of all council meetings. See, [Section 5-11-20, Code, 1976](#).

3. We cannot comment on this matter because insufficient information has been provided thereon. This matter, as well as the others, should be brought to the attention of the attorney for the Town for his review.

4. [Section 5-11-30 of the Code, 1976](#), on the council form of government, provides, in pertinent part, as follows:
All legislative and administrative powers of the municipality and the determination of all matters of policy shall be vested in the municipal council.

This language is clear, and we have found no other provision in the statutes on municipal government which vest administrative powers in the mayor under the council form of government.

Sincerely,

*2 James M. Holly
Assistant Attorney General

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