



ALAN WILSON
ATTORNEY GENERAL

April 20, 2016

The Honorable Hardy King
Mayor of Irmo
P.O. Box 406
Irmo, SC 29063-0406

The Honorable Mark Pouliot
Irmo Town Council Member
P.O. Box 406
Irmo, SC 29063-0406

The Honorable Julius Waites
Irmo Town Council Member
P.O. Box 406
Irmo, SC 29063-0406

Dear Mr. King, Pouliot and Waites,

We are in receipt of your letter concerning our opinion of November 16, 2015 to the Town of Irmo's ("the Town") Chief of Police, Joe Nates. Specifically, you explain your concerns are no longer related to the removal of a council member from office, the issue you suggest was addressed in our prior opinion, but are instead related to removing a council member from a meeting where such an individual interrupts a speaker, argues with a speaker and allegedly makes "improper and dilatory motions" motions which, in your opinion, are intended to lengthen and disrupt meetings. Accordingly, you ask us to clarify whether town council possesses the authority to discipline one of its members by removing the member at issue from a council meeting and, assuming the council possesses such authority, further ask whether you may instruct municipal police to enforce such an order. Our response follows.

I. Law/Analysis

In your request letter, you cite to Robert's Rules of Order for the proposition that you have the authority to discipline a fellow councilmember by removing him or her from a council meeting. In particular, you cite the process detailed in Roberts Rules and suggest that because the Town has adopted such rules, it follows that the council has the authority to discipline a member in the fashion described in the rule. However, the application of this provision is dependent on the underlying question of whether the Legislature has delegated the authority to discipline council members in this fashion to town council. We believe it has not and, as a result, conclude town council lacks the authority to discipline one of its members by removing him or her from a council meeting.¹

¹ In light of this conclusion we find it unnecessary to answer your second question.

In prior opinions we have recognized, “the autonomy and authority of local governments has increased significantly since the advent of Home Rule.” Op. S.C. Att’y Gen., 2013 WL 861300 (February 22, 2013); Op. S.C. Att’y Gen., 2011 WL 1740752 (April 7, 2011). Specifically, the “Home Rule” amendment, codified in Article VIII, Section 17 of the South Carolina Constitution, says, “[t]he provisions of this Constitution and all laws concerning local government shall be liberally construed in their favor. Powers, duties, and responsibilities granted local subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution.” S.C. Const. art. VIII, § 17 (1895).

As it relates to municipalities, the Constitution charges the Legislature with providing for the “structure and organization, powers, duties, functions, and responsibilities of the municipalities . . .” S.C. Const. art. VIII, § 9 (1895). These provisions are codified in Chapters 7, 9, 11, and 13 of Title 5 of the South Carolina Code. See e.g., S.C. Code Ann. § 5-7-10 (2004) (“The provisions of this chapter provide for the structure, organization, powers, duties, functions and responsibilities of municipalities under all forms of municipal government provided for in Chapters 9, 11 and 13 unless otherwise specifically provided for in those chapters.”). Therefore, when we are asked to determine a council’s authority to undertake an action, we must first ascertain the alleged statutory authority tied to such an action.

A. Whether the Legislature Expressly Delegated the Disciplinary Authority Mentioned in your Request Letter to Town Council Pursuant to Section 5-7-30 of the South Carolina Code

Section 2-1 of the Irmo Code of Ordinances explains Irmo is governed by the “council form of government as provided in S.C. Code 1976 5-11-10—5-11-40[.]” Irmo Code of Ordinances § 2-1. In turn, Section 2-1’s cross-referenced provision of the South Carolina Code, Section 5-11-10, explains that Chapter Seven of Title Five generally provides for, among other things, the “powers . . . of municipal government under the council form [of government].” S.C. Code Ann. § 5-11-10 (2004); see also, S.C. Code Ann. § 5-7-10 (“The provisions of this chapter provide for the structure, organization, powers, duties, functions and responsibilities of municipalities under all forms of municipal government provided for in Chapters 9, 11 and 13 unless otherwise specifically provided for in those chapters.”). Thus, in examining the extent of town council’s authority to discipline its own members by removing them from a meeting, we must first consult Section 5-7-30 of the Code, entitled “[p]owers conferred upon municipalities[.]” Section 5-7-30 states:

Each municipality of the State, in addition to the powers conferred to its specific form of government, may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of powers in relation to roads, streets, markets, law enforcement, health,

and order in the municipality or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it, including the authority to levy and collect taxes on real and personal property and as otherwise authorized in this section, make assessments, and establish uniform service charges relating to them; the authority to abate nuisances; the authority to provide police protection in contiguous municipalities and in unincorporated areas located not more than three miles from the municipal limits upon the request and agreement of the governing body of such contiguous municipality or the county, including agreement as to the boundaries of such police jurisdictional areas, in which case the municipal law enforcement officers shall have the full jurisdiction, authority, rights, privileges, and immunities, including coverage under the workers' compensation law, which they have in the municipality, including the authority to make arrests, and to execute criminal process within the extended jurisdictional area; provided, however, that this shall not extend the effect of the laws of the municipality beyond its corporate boundaries; grant franchises for the use of public streets and make charges for them; grant franchises and make charges for the use of public beaches; engage in the recreation function; levy a business license tax on gross income, but a wholesaler delivering goods to retailers in a municipality is not subject to the business license tax unless he maintains within the corporate limits of the municipality a warehouse or mercantile establishment for the distribution of wholesale goods; and a business engaged in making loans secured by real estate is not subject to the business license tax unless it has premises located within the corporate limits of the municipality and no entity which is exempt from the license tax under another law nor a subsidiary or affiliate of an exempt entity is subject to the business license tax; borrow in anticipation of taxes; and pledge revenues to be collected and the full faith and credit of the municipality against its note and conduct advisory referenda. The municipal governing body may fix fines and penalties for the violation of municipal ordinances and regulations not exceeding five hundred dollars or imprisonment not exceeding thirty days, or both. If the person or business taxed pays a business license tax to a county or to another municipality where the income is earned, the gross income for the purpose of computing the tax must be reduced by the amount of gross income taxed in the other county or municipality.

S.C. Code Ann. § 5-7-30 (2015 Supp.) (emphasis added).

In interpreting Section 5-7-30's delegation of legislative authority, our Supreme Court has previously concluded "the broad grant of power stated at the beginning of the statute is not

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limited by the specifics mentioned in the remainder of the statute.” Hospitality Ass’n of South Carolina, Inc. v. County of Charleston, 320 S.C. 219, 227, 464 S.E.2d 113, 118 (1995). Indeed, as noted by the Court, “[t]o hold otherwise would directly contradict S.C. Code Ann. § 5-7-10” as well as the terms of Article VIII, Section 17. Hospitality Ass’n of South Carolina, Inc., 320 S.C. at 227, 464 S.E.2d at 118.

However, “while the powers bestowed by Home Rule upon local governments are now broad, it is clear not only from the language of Art. VIII itself, but the decisions of the South Carolina Supreme Court, that neither Article VIII nor the concept of ‘Home Rule’ bestows unlimited powers upon local governments.” Op. S.C. Att’y Gen., 2013 WL 861300 (February 22, 2013). For instance, “it has been the consistent opinion of this Office that entities created by statute . . . can only exercise those powers expressly granted to it by statute and those powers conferred by necessary implication.” Op. S.C. Att’y Gen., 2016 WL 963697 (February 11, 2016) (citing Op. S.C. Att’y Gen., 2015 WL 1636661 (March 26, 2015); Op. S.C. Att’y Gen., 1974 WL 27574 (January 4, 1974); Op. S.C. Att’y Gen., 1969 WL 15607 (June 24, 1969)). In fact, it is a generally recognized principle of municipal law that “[t]he powers that may be exercised by the governing or legislative body . . . depend upon the state constitution, statute or charter” 4 McQuillin Mun. Corp. § 13.2 (3rd ed.) and “strict construction must be applied in construing statutes granting powers to a city council.” Id. This is because, [a] local legislative body is possessed of special powers, limited by constitutional, statutory, and charter provisions, and all acts by it in excess of its powers are simply nugatory.” Id. Thus, to summarize, while Section 5-7-30’s grant of legislative power at the beginning of the statute must be liberally construed in light of the terms of Section 5-7-10 and Article VIII, Section 17, its terms cannot be interpreted so broadly so as to create authority where it fails to exist. Stated differently, while cases such as Hospitality Ass’n of South Carolina require liberal construction of a municipality’s legislative authority, authority which is clearly established via Section 5-7-30’s express language concerning a municipality’s ability to “enact regulations, resolutions, and ordinances,” it is equally true that a municipality’s authority must be strictly construed in the absence of any legislation enabling a municipality to act, since a municipality’s actions “in excess of its powers are simply nugatory.” 4 McQuillin Mun. Corp. § 13.2 (3rd ed.).

Carrying this understanding of the law over to your question, we believe a review of Section 5-7-30 reflects town council lacks the authority to discipline one of its members by removing them from a meeting. In particular, Section 5-7-30 is simply silent as it relates to a municipality’s authority to discipline its own members and thus, consistent with general municipal law, must be strictly construed. 4 McQuillin Mun. Corp. § 13.2 (3rd ed.) (detailing that “strict construction must be applied in construing statutes granting powers to a city council.”); Op. S.C. Att’y Gen., 2016 WL 963697 (February 11, 2016) (explaining a statutorily created entity’s powers must be narrowly construed in the absence of express statutory authority). Indeed, it seems obvious that if the Legislature had intended to bestow disciplinary

authority to the legislative bodies mentioned in Title Five, it would have done so by express language in light of the fact “entities created by statute . . . can only exercise those powers expressly granted to it by statute and those powers conferred by necessary implication.” Op. S.C. Att’y Gen., 2016 WL 963697 (February 11, 2016) (citing Op. S.C. Att’y Gen., 2015 WL 1636661 (March 26, 2015); Op. S.C. Att’y Gen., 1974 WL 27574 (January 4, 1974); Op. S.C. Att’y Gen., 1969 WL 15607 (June 24, 1969)). Accordingly, we conclude that since Section 5-7-30’s legislative grant of power to municipalities does not expressly include the authority to discipline council members by removing them from a meeting, town council, whose authority is delegated by the Home Rule Act, cannot discipline one of its members in the manner described in your request letter, absent a finding that town council inherently possesses such authority. See Hodges v. Rainey, 341 S.C. 79, 86-87, 533 S.E.2d 578, 582 (2000) (explaining with respect to statutory construction that, “to express or include one thing implies the exclusion of another or the alternative.”).

B. Whether Other Provisions Necessarily Imply the Existence of the Inherent Authority to Discipline in the Manner Suggested in your Opinion Request

Moreover, and in light of the general municipal requirement of strict construction of statutes granting municipalities powers, we cannot conclude local deliberative bodies are granted inherent power to discipline a fellow member by removing such an individual from a meeting. Notably, neither Section 5-7-30, 5-7-10, nor Article VIII, Section 17, each of which deal with “Home Rule,” contain any language suggesting that the Legislature’s delegation of local legislative authority would necessarily include the authority for local deliberative bodies to discipline its members by the means suggested in your opinion request. See Rainey, 341 S.C. at 86-87, 533 S.E.2d at 582 (explaining with respect to statutory construction that, “to express or include one thing implies the exclusion of another or the alternative.”). In fact, as it relates to the town council form of government, the only statutory provision even suggesting the existence of inherent disciplinary authority at all comes in Section 5-11-30 of the Code. Section 5-11-30 of the Code states in relevant part, that “[a]ll legislative and *administrative powers of the municipality* and the determination of all matters of policy shall be vested in the municipal council.” S.C. Code Ann. § 5-11-30 (2004) (emphasis added). Yet even a broad construction of that statute does not lead us to the conclusion that a local deliberative body possesses authority to discipline one of its own members via removal from a meeting. In particular, while Section 5-11-30 does provide that the administrative powers *of the municipality* are vested in the municipal council, we do not believe this can be fairly read as a delegation of disciplinary authority over *town council*.² Rather, to the extent the phrase “administrative powers of the municipality” can be read to mean “disciplinary powers of the municipality,” we believe such language would not

² For instance, this Office, in a prior opinion, relied on Section 5-11-30 for the proposition that town council’s administrative authority allows it to “hire and fire appointed officers such as a chief of police.” Op. S.C. Att’y Gen., 2014 WL 6705715 (November 18, 2014).

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extend to town council itself. Indeed, this Office, in a recent opinion, rejected this argument in a slightly different context explaining that a County Board of Education did not have inherent authority to discipline its members. Op. S.C. Att’y Gen., 2016 WL 963697 (February 11, 2016). Notably, we found that despite the Fourth Circuit’s ruling in Whitener v. McWaters, 112 F.3d 740 (4th Cir. 1997)—that the Virginia equivalent of a county council has inherent disciplinary authority—county boards of education, which like municipal corporations are creatures of statute, could not exercise disciplinary authority because “any inherent authority of the Board must be derived from or be necessary in carrying out its express power.” Op. S.C. Att’y Gen., 2016 WL 963697 (February 11, 2016). Thus, applying our prior conclusion to this situation—that inherent authority must be “derived from or be necessary in carrying out its express power”—we conclude that because the relevant statutory and constitutional authorities mentioned above do not include the existence or necessity of disciplinary authority to dismiss a fellow member from a meeting, town council lacks the inherent authority to act in this way and, as a result, is advised against invoking the process you mentioned in your request.

II. Conclusion

In conclusion, it is the opinion of this Office that Irmo’s town council lacks the authority to discipline one of its members by removing such an individual from a meeting. Specifically, and as explained more fully above, we believe that despite the existence of the Home Rule Amendment and Home Rule Act, the lack of express authority to discipline a member in the way suggested in your letter requires us to strictly construe statutes detailing the powers of a municipality against the existence of such a power in this case. See 4 McQuillin Mun. Corp. § 13.2 (3rd ed.) (detailing that “strict construction must be applied in construing statutes granting powers to a city council.”); Op. S.C. Att’y Gen., 2016 WL 963697 (February 11, 2016) (explaining a statutorily created entity’s powers must be narrowly construed in the absence of express statutory authority). Moreover, and in light of the general municipal requirement of strict construction of statutes granting municipalities powers in the circumstances discussed above, we cannot conclude municipalities possess inherent authority to discipline a fellow member by removing such an individual from a meeting. In particular, our prior conclusion that inherent authority must be “derived from or be necessary in carrying out [that entity’s] express power,” necessarily controls this result. Therefore, absent legislative clarification concerning the disciplinary authority of a municipality, it is the opinion of this Office that a court would likely find Irmo’s town council lacks the authority to discipline one of its members by removing such an individual from a meeting.

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Sincerely,



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REVIEWED AND APPROVED BY:



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