



ALAN WILSON
ATTORNEY GENERAL

June 28, 2016

Mr. G. Waring Parker, Esq.
Attorney for Town of Summerville
200 S. Main Street
Summerville, SC 29211

Dear Mr. Parker,

Attorney General Alan Wilson has referred your letter dated February 9, 2016 to the Opinions section regarding whether a proposed municipal ordinance presented for second and final reading in a “redlined”¹ format is “in the form required for final adoption.” Based on the analysis below, we believe a court will determine that a “redlined” format complies with the statutory requirement found in South Carolina Code Section 5-7-270 that “every proposed ordinance... be introduced in writing and in the form required for final adoption.”

Law/Analysis

The South Carolina Code of Laws establishes the procedures for introduction and passage of municipal ordinances as follows:

Every proposed ordinance shall be introduced in writing and in the form required for final adoption. Each municipality shall by ordinance establish its own rules and procedures as to adoption of ordinances. No ordinance shall have the force of law until it shall have been read two times on two separate days with at least six days between each reading.

S.C. Code Ann. § 5-7-270 (emphasis added).

To determine what form is required for final adoption of a municipal ordinance, we are guided by “[t]he cardinal rule of statutory interpretation, [which is] is to ascertain and effectuate the legislative intent whenever possible.” Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015). 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.” United States v. Joshua, 607 F.3d 379, 385 (4th Cir. 2010) (quoting United States v. Rippetoe, 178 F.2d 735, 737 (4th Cir. 1949)).

This Office has explained in a prior opinion that the Legislature left discretion to municipal governing bodies to establish the rules for adoption and passage of ordinances. Op. S.C. Att’y Gen., 1976 WL 30721 (March 17, 1976). The form required for final adoption “means only that the proposed

¹ Black’s Law Dictionary defines “redlining” as “the process, usu. automated, of creating, for an existing document, an interim version that shows, through strike-outs and other typographical features, all deletions and insertions made in the most recent revision.” Black’s Law Dictionary (10th ed. 2014).

ordinance must meet such requirements as to form as may be established by the council for the adoption of ordinances, e.g., the inclusion of a title, recitals, a preamble, an enacting clause and so on..." Id.² Accordingly, we apply the principal here that "[t]he absence of any legislative amendment following the issuance of an opinion of the Attorney General strongly suggests that the views expressed therein were consistent with the legislative intent." Op. S.C. Att'y Gen., 2014 WL 2757535, at *4 (June 2, 2014) (citing Scheff v. Township of Maple Shade, 149 N.J.Super. 448, 374 A.2d 43 (1977)). For the reasons stated above, it is this Office's opinion that the Legislature did not intend to establish form requirements for proposed municipal ordinances in the South Carolina Code of Laws, but rather left the establishment of such requirements to the discretion of municipal governing bodies.

We next look to the Summerville Code to determine whether additional form requirements have been established for the municipality. In fact, the Summerville Code does establish the following requirements regarding ordinances:

- (a) Style. The style of all ordinances shall be "Be it Ordained by the Mayor and Council of the Town of Summerville, in Council Assembled."
- (b) Codification. In the event of a codification or recodification of the general ordinances of the town, the engrossing thereof in the book of ordinances shall not be required. The ratification thereof shall be sufficient if a copy of such codification shall be signed by the mayor and clerk and treasurer with the seal of the town affixed. Notation thereof shall be made in the ordinance book, and a copy of such codification shall be carefully preserved in the archives of the town.
- (c) Notation of amendment or repeal. The clerk and treasurer shall write on the first page of every ordinance, if the ordinance has been amended or repealed, the words "amended" or "repealed," as the case may be, with a reference to the date and page of the ordinance book where the amending or repealing ordinance can be found.

Summerville, S.C., Code § 2-107. This section does mandate a style requirement for introducing or passing ordinances, but does not address the whether a redlined document can be considered in the form required for final adoption. Id.

We are unable to locate any prohibition in the South Carolina Code of Laws or the Summerville Code regarding the introduction of proposed municipal ordinances in redlined format for final adoption. Inasmuch as no express or specific provision proscribes the introduction of municipal ordinances in redlined format, "the law will not permit such a limitation to be implied." Op. S.C. Att'y Gen., 2006 WL 2593082 (August 24, 2006). It is this Office's opinion that a proposed municipal ordinance which otherwise complies with S.C. Code Ann. § 5-7-270 and Summerville, S.C., Code § 2-107 will not be held invalid because it was introduced in redlined format.

² This Office recognizes a long-standing rule that it will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law. Op. S.C. Att'y Gen., 2013 WL 6516330 (Nov. 25, 2013); Op. S.C. Att'y Gen., 2013 WL 3762706 (July 1, 2013); Op. S.C. Att'y Gen., 2009 WL 959641 (March 4, 2009); Op. S.C. Att'y Gen., 2006 WL 2849807 (September 29, 2006); Op. S.C. Att'y Gen., 2005 WL 2250210 (September 8, 2005); Op. S.C. Att'y Gen., 1986 WL 289899 (October 3, 1986); Op. S.C. Att'y Gen., 1984 WL 249796 (April 9, 1984).

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Conclusion

For the reasons described above, we believe a court will likely find a proposed municipal ordinance presented in redlined format would “in the form required for final adoption” as required by the South Carolina Code of Laws and the Summerville Code. This Office is, however, only issuing a legal opinion based on the current law at this time and the information as provided to us. Until a court or the General Assembly 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. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code § 15-53-20. If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General