

1979 WL 43108 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 12, 1979

\*1 B. Monroe Hiers, Esquire  
Ehrhardt Town Attorney  
Post Office Box 416  
Bamberg, South Carolina 29003

Dear Mr. Hiers:

You have requested an opinion from this Office as to the nature and extent of the duties which the municipal council in the mayor-council form of municipal government may assign to the municipal clerk pursuant to [Section 5-7-220, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, (Cum.Supp.).

[Section 5-7-220 of the 1976 Code](#) provides in part as follows:

The council under the . . . mayor-council [form] of government . . . shall appoint an officer of the municipality who shall have the title of municipal clerk. The municipal clerk shall give notice of council meetings to its members and the public, keep the minutes of its proceedings and perform such other duties as are assigned by council.

In my opinion, under this language, the council is authorized to prescribe clerical duties for the municipal clerk which are directly related to the council's activities, i.e., to the making of policy, including the enactment of ordinances, for the municipality. This provision does not authorize the council to prescribe duties which relate primarily to the daily functioning and operation of the municipality, i.e., to those activities which are specifically vested in the mayor as its chief administrative officer [[§ 5-9-30, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended], or in those employees and officers who are under his supervision and subject to his control. This conclusion is supported by other provisions of Chapter 9 of Title 5 of the 1976 Code applicable to the mayor-council form of municipal government, to wit: Section 5-9-40 provides that:

. . . The mayor and council may employ an administrator to assist the mayor in his office . . . [Emphasis added.]

and that:

All departments, offices and agencies under the direction and supervision of the mayor shall be administered by an officer appointed by and subject to the direction and supervision of the mayor.

You have also inquired as to the budgetary power of the council in the mayor-council form of government. While it is true that the council exercises totally the budgetary authority of the municipal government and, consequently, can increase, decrease or otherwise alter appropriations for specific municipal officers and functions [[§ 5-7-216](#)], nevertheless, it cannot so decrease the appropriations of an elected official's office as to prevent its proper functioning and, thus, indirectly, to abolish that official's office. See generally, 20 CJS Counties §§ 100(a), (b) and (b); 56 AM.JUR.2d Municipal Corporations §§ 237 through 239; 3 McQUILLIN MUNICIPAL CORPORATIONS § 12.118.

With kind regards,

Karen LeCraft Henderson  
Senior Assistant Attorney General

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