

1979 WL 43207 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 17, 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 various aspects of the role and functioning of the municipal clerk, inter alia, in the mayor-council form of municipal government and I shall respond to them in the order in which they were posed:

1. The municipal clerk expressly provided for by [Section 5-7-220, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended, is a position created by that provision to perform duties clerical in nature; accordingly, the individual who was hired in 1973 as 'clerk-treasurer' is not the municipal clerk contemplated by [Section 5-7-220](#). The Town of Ehrhardt may retain a 'clerk-treasurer' so long as that individual's duties do not infringe upon those specifically prescribed by [Section 5-7-220](#) for the municipal clerk.
2. If the 'clerk-treasurer' does perform the duties prescribed by [Section 5-7-220](#) for the municipal clerk, then the position should be separated with the municipal council appointing a municipal clerk (as the statute provides) and creating the position of treasurer.
3. If the position of 'clerk-treasurer' needs to be separated (per paragraph 2), then the municipal council can create the position of treasurer by ordinance or by inclusion of the position in the annual budget.
4. The municipal council establishes municipal departments, offices and agencies and prescribes their respective functions pursuant to [Section 5-9-40, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended, and the mayor appoints the individuals to fill those departments, offices and agencies pursuant to [Section 5-9-30\(1\), CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended.
5. Whether or not the mayor in the mayor-council form of municipal government can expend federal revenue sharing funds without the participation or consent of the municipal council depends upon the terms of the agreement between the town and the federal government, i.e., who is the designated receiver and disbursing officer of those funds. Of course, the municipal council is the body empowered to appropriate funds pursuant to [Sections 5-7-160 and 5-7-260\(3\), CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended, so that, if it appropriates federal revenue sharing funds, those funds should not be expended unless they are so appropriated.
6. In my opinion, the municipal council is authorized to assign duties clerical in nature to the municipal clerk pursuant to [Section 5-7-220](#) and, consequently, may very well not be authorized to assign non-clerical duties such as the disbursement of public funds, etc. to that official. Nevertheless, because the question is one that is not free from doubt, I would recommend that the only definitive resolution would be a judicial one pursuant to [Sections 15-53-10 et seq., CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended, the Uniform Declaratory Judgments Act.

*2 7. In the absence of express authority to the contrary, the mayor is not supposed to expend public funds which have not been appropriated for such expenditure by the municipal council.

With kind regards,

Karen LeCraft Henderson
Senior Assistant Attorney General

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