

1979 WL 43624 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 27, 1979

*1 John H. Tiencken, Jr., Esquire
Dennis, Dennis & Watson
Post Office Drawer 1174
Moncks Corner, South Carolina 29461

Dear Mr. Tiencken:

You have asked the opinion of this Office on the legality and constitutionality of an ordinance under consideration by the Berkeley County Council which regulates the political activity of employees and appointed officials employed by the County and on the legality and constitutionality of such regulation generally. More specifically, you inquired whether there was any legal defect in the proposed ordinance exempting elected officials from the provision prohibiting employees and appointed officials from seeking election to a County position while employed by the County.

Proposed ordinance No. 79-7-21 of Berkeley County provides that:

No County employee and/or appointed official shall run for a County position while employed by the County; provided, however, this restriction shall not apply to elected officials of the County. County employees may participate in both partisan and non-partisan political activities provided that no employee shall (1) engage in any political activity while on duty; (2) be required as a condition of his or her employment, to contribute to, solicit for, or act as custodian of funds for political purposes; or (3) coerce or compel contributions by any other employees for political purposes; (4) use official authority or influence for the purpose of interfering with or affecting the results of an election or nomination for office; (5) use county equipment or resources for campaigning purposes; (6) engage in wearing of uniforms while attending political functions while off duty; (7) engage in any activity expressly prohibited by state law. [Hereinafter referred to as 79-7-21].

Since the receipt of your opinion request, our Office understands that 79-7-21 has been amended. You have informed us that the amended version does not contain a specific reference to appointed officials, but that the use of the term County employees therein with regard to the stated prohibitions includes officials appointed and employed by the County. You further informed us that the recent amendments to 79-7-21 do not affect the substance of the questions posed by you.

The statutory authority for the County Council to enact 79-7-21 is found in [§ 4-9-30\(7\) of the Code of Laws of South Carolina](#), 1976. This subsection provides that a county governing body has the power ‘to develop personnel system policies and procedures for county employees by which all county employees are regulated except those elected directly by the people, and to be responsible for the employment and discharge of county personnel in those county departments in which the employment is vested in the county government . . .’ The use of the word employees in this statute appears to include within its meaning officials appointed and employed by the County Council.

Statutes and ordinances similar to 79-7-21 often have been subject to suits asserting that they violate the right to freedom of speech guaranteed by the First and Fourteenth Amendments to the United States Constitution. [Also see Article 1, § 2, South Carolina Constitution](#). However, in a leading case on this issue, the United States Supreme Court upheld an Oklahoma statute containing restrictions on the political activities of classified civil servants of the state which are much more detailed and comprehensive than 79-7-21. [Broadrick v. Oklahoma](#), 431 U.S. 601, 37 L.Ed.2d 830, 93 S.Ct. 2908 (1973). Also recognizing the important governmental interest in promoting efficiency and integrity in the discharge of

official duties and in insulating public employees from political pressures so as to protect their individual rights, other cases have held that such regulatory statutes and ordinances do not contravene the First and Fourteenth Amendments. [Magill v. Lynch](#), 560 F.2d 22 (1st Cir. 1977), cert. den. 434 U.S. 1063 (1978); [Perry v. St. Pierre](#), 518 F.2d 184 (2nd Cir. 1975); [Pennsylvania ex rel. Specter v. Moak](#), 452 Pa. 482, 307 A.2d 884 (1973); Annotation, 28 A.L.R.2d 717. See [Pickering v. Board of Education](#), 391 U.S. 563, 20 L.Ed.2d 811, 88 S.Ct. 1731 (1968); [Elrod v. Burns](#), 427 U.S. 347, 366-371, 49 L.Ed.2d 547, 96 S.Ct. 2673 (1976).

*2 Our Office has been informed that 79-7-21 is being offered by the Berkeley County Council to promote governmental interests identical or similar to those discussed in the cases cited in the preceding paragraph. Furthermore, 79-7-21 generally is more narrow in its application than the statutes and ordinances in dispute in those cases. It restricts the covered persons from seeking election to County offices rather than to any elective office. See, 28 A.L.R.2d at 725-726; [Magill v. Lynch](#), *supra*, at 29. The ordinance also expressly permits participation in partisan and non-partisan political activities by the covered persons while not on duty for the County. The ordinance thus is within the principle established by the above-cited cases.

Despite the apparent over-all validity of 79-7-21, a point of caution should be made. Subpart (1) of 79-7-21, which prohibits any political activity while the County employee or appointed official is on duty, might be subject to constitutionally impermissible applications. For example, in [Broadrick v. Oklahoma](#), the Court remarked that the expression of certain types of political opinions, the wearing of political buttons, or the use of bumper stickers may not be within the range of activities that an employing government constitutionally may prohibit. *Ibid.*, at 617-618. A suggested procedure to employ to avoid such possible unconstitutional applications of this subpart is to inquire whether the particular activity sufficiently interferes with the important governmental interests underlying 79-7-21. See, 28 A.L.R.3d at 720, [Pickering v. Board of Education](#), *supra*, at 817; [Broadrick v. Oklahoma](#), *supra*, at 611-612, 616-617; [Elrod v. Burns](#), *supra*, at 354-373. A specific inquiry posed in your request for an opinion is whether 79-2-21 constitutionally may exempt elected officials from the prohibition against County employees and appointed officials seeking election to a County office while employed by the County. Before discussing the issue raised by your inquiry, it should be noted that [§ 4-9-30\(7\)](#), cited above, specifically states that the personnel policies promulgated by the governing body of a county do not apply to county officials 'elected directly by the people.' Therefore, under this State statute, 79-7-21 could not be made applicable to elected county officials.

The exemption of elected officials from the restrictions of 79-7-21 may be thought to raise the question of whether the proposed ordinance is discriminatory in that it violates the equal protection provision of the Fourteenth Amendment to the United States Constitution and [Article I, § 3](#) of the South Carolina Constitution. However, it has been held that measures undertaken by the government to limit the positions upon which such restrictions are placed do not constitute a violation of that precept of law. [Broadrick v. Oklahoma](#), *supra*, at 607, n. 5; [Perry v. Pierre](#), *supra*, at 186; [Pennsylvania ex rel. Specter v. Moak](#), *supra*, A.2d at 890, n. 7.

*3 Based on the foregoing reasons, it is the opinion of this Office that the proposed Berkeley County ordinance designated as 79-7-21, which seeks to restrict the political activities of Berkeley County employees and officials appointed and employed by the Berkeley County Council, is valid.

Sincerely yours,

James M. Holly
State Attorney

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