



ALAN WILSON  
ATTORNEY GENERAL

October 09, 2017

The Honorable Garry R. Smith, Member  
South Carolina House of Representatives  
534 Blatt Building  
Columbia, South Carolina 29201

Dear Representative Smith:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter forwards an opinion request from Greenville County Council members Willis Meadows, Joe Dill, and Michael F. Barnes. Their request reads as follows:

1. On July 18, 2017 the Chairman of County Council moved to suspend notice and amendment introduction provisions of the Rules of Greenville County Council to amend Council Rule V(C) to allow the Chairman of Council to appoint the Chair of the Finance Committee....

The Chairman believes these changes are effective immediately. Rule V(C)(3) states "Members and Officers of the Standing Committees shall serve until the second of January following the next General Election." In accordance with Rule V(C)(1) the Chairman already appointed Committee members in January of 2017 and the Chairmanship of the Finance Committee also commenced at that time.

We would request your opinion as to whether or not these changes can take place before the second January following the next General Election.

2. On July 21, 2017 the Chairman of County Council issued the attached memorandum reassigning all committees of Greenville County Council. The Chairman misquotes the rule which does not end with a period after "merited".

...

The intent of this provision as adopted in January of this year was to address a situation last year where a member of council was ill and unable to attend any meetings for a lengthy period of time. The provision in effect last year simply stated "Members and Officers of the Standing Committees shall serve until the second of January following the next General Election of Council."

Therefore, we would request your opinion as to whether or not the Rules of Greenville County Council authorized the Chairman to change all the committee assignments of the Council whenever he wishes.

### Law/Analysis

It is this Office's opinion that a court would likely find the Rules of Greenville County Council, as amended on July 18, 2017, authorize the Chairman to both "change" standing committee membership "as merited" and to make "additional appointments as needed" prior to the expiration of such a committee membership's two year term. This Office's opinion is informed by the rules of statutory interpretation, relevant statutes, and the text of the Rules of Greenville County Council.

"The cardinal rule of statutory interpretation 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). Where the language of a statute, ordinance, or other legislation is plain and unambiguous, "the text... is considered the best evidence of the legislative intent or will." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers." State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), *reh'g denied* (Aug. 5, 2015).

The South Carolina Code of Laws grants a county council the authority to "determine its own rules and order of business." S.C. Code Ann. § 4-9-110. In McSherry v. Spartanburg Cty. Council, 371 S.C. 586, 589, 641 S.E.2d 431, 433 (2007), the South Carolina Supreme Court found it had neither a constitutional nor a statutory basis to invalidate a county council's rules and procedures which otherwise complied with general law. See also Lambries v. Saluda Cty. Council, 409 S.C. 1, 16, 760 S.E.2d 785, 792 (2014) ("A council must conduct its meetings in accordance with the general state law affecting the meetings of public bodies, but it is entitled 'to determine its own rules and order of business.'"); Sloan v. Greenville Cty., 356 S.C. 531, 555-56, 590 S.E.2d 338, 351 (Ct. App. 2003) ("In reviewing the discretionary decision of a legislative body, our courts have been loath to substitute their judgment for that of elected representatives. Such decisions 'should not be upset on appeal unless [they are] arbitrary, unreasonable, in obvious abuse of discretion, or in excess of lawfully delegated power.'").

Similarly, this Office has previously opined that county councils are authorized to establish their own rules regarding standing committee appointments as follows:

We must advise that there is no state statute which dictates operating procedures of county councils, including the structure of standing committees. The power of a county council is plenary in this regard. The law generally states that a

municipal or county government is free to make or change its rules of procedure. As is stated in 4 McQuillin, Municipal Corporations § 13.42:

The council may abolish, suspend, modify or waive its own rules. This also may be done by implication, when action is had not in accordance therewith.

See also 56 Am.Jur.2d Municipal Corporations, etc. § 156.

...

Council has the power to amend or abolish its own rule, by implication by the taking of some action inconsistent with the rule, or otherwise. If the rule were adopted by ordinance, it would be preferable to amend the rule by ordinance, to avoid problems sometimes arising with amendment by implication.

Op. S.C. Atty. Gen., 1985 WL 259134 (February 27, 1985).

As stated in the opinion request, the Rules of Greenville County Council revised Rule V(C) in both January and July of 2017. The Greenville County Council Minutes for January 27, 2017 state that the motion to approve proposed County Council Rules “carried unanimously.” As amended, Rule V(C) read as follows:

- (1) Not later than the second regular Council meeting in January following each General Election, the Chairman of Council shall appoint: five (5) Council members to the Committee on Planning and Development; five (5) Council members to the Committee on Public Works and Infrastructure; five (5) Council members to the Committee on Public Safety and Human Services; and four (4) Council members to the Committee on Finance. The Chairman of County Council shall appoint the Chairman for each Committee, except for Finance. The Chairman of each Committee shall appoint the Vice-Chairman for his or her respective Committee.
- (2) The Finance Committee will consist of the Vice Chairman of Council, who shall serve as Chairman of the Finance Committee, and up to five (5), but not less than four (4) other members of Council, who shall be appointed by the Chairman of Council.
- (3) Members and Officers of Standing Committees shall serve until the second of January following the next General Election of Council. Provided, however, that during the course of the two year term, the Chairman may change committee membership as merited; and make such additional appointments as needed due to the inability of any Council member to attend meetings.

The Greenville County Council Minutes for July 18, 2017 state the Committee of the Whole again moved to amend Council Rule V(C). As noted in the opinion request above, a motion was made to suspend Council Rules “on notice and previous Regular Meeting requirement... to allow for the immediate consideration and adoption of an amendment to Council Rules.” This motion to suspend Council Rules carried by a vote of ten to two. The motion to amend Council Rules V(C) carried by a vote of nine to three. As amended, Council Rule V(C) now reads:

- (1) Not later than the second regular Council meeting in January following each General Election, the Chairman of Council shall appoint: five (5) Council members to the Committee on Planning and Development; five (5) Council members to the Committee on Public Works and Infrastructure; five (5) Council members to the Committee on Public Safety and Human Services; and up to six (6), but not less than five (5) Council members to the Committee on Finance. The Chairman of County Council shall appoint the Chairman for each Committee. The Chairman of each Committee shall appoint the Vice-Chairman for his or her respective Committee.
- (2) Members and Officers of Standing Committees shall serve until the second of January following the next General Election of Council. Provided, however, that during the course of the two year term, the Chairman may change committee membership as merited; and make such additional appointments as needed due to the inability of any Council member to attend meetings.

This Office has communicated with the Greenville County Attorney’s Office to ascertain the sequence and method of legislative action taken by Greenville County Council described above. This Office was provided the following excerpt from a July 27, 2017 letter written by Greenville County Attorney Mark Tollison concerning the effect of the January 2017 rules amendment. The letter from Mr. Tollison stated the following:

First, regarding the operation of Council Rule V(C)(3) which is now listed as (C)(2). As you are aware County Council added a new sentence to that rule back in January 2017. The addition does two things, first it allows the Chairman to “change committee membership as merited;” and second, it allows him to make “additional appointments as needed due the inability of any member to attend meetings.” As indicated by the semicolon, those are two separate clauses for two wholly separate types of actions affecting membership during the term: (1) “changing committee membership” and then (2) “adding members” in case of inability to attend.

One more note on this rule issue with respect to committees. It is well established that governing bodies can make rules for their procedures so long as they do not violate state law. The determination of parliamentary procedure and organization is fully within the purview of the public body. With no state law concerning or

controlling any of the recent Council rule amendments or committee assignments, I do not see a legal challenge to these actions going very far with courts being very reluctant to interfere.

This Office agrees with Mr. Tollison's conclusion that a court would likely defer to the County Council's determination of its own rules and procedures. As both amendments were enacted by majority votes of Greenville County Council, they are enforceable unless contrary to law. See McSherry v. Spartanburg Cty. Council, *supra*. This Office further agrees that the use of the conjunctive "and" in Rule V(C)(2) expresses two distinct actions which the Chairman may take during a standing committee's term. First, the Chairman may make changes to a standing committee's membership "as merited." Second, the Chairman may make additional "appointments as needed due to the inability of any Council member to attend meetings." Both the authority to change standing committee membership and to make additional appointments are powers which are authorized "during the course of the two year term." The "two year term" refers back to the duration from "January following each General Election," as stated in Rule V(C)(1) to "the second of January following the next General Election of Council," as stated in the first sentence of Rule V(C)(2). The plain language of the Rule V(C)(2) expressly allows for such a change or addition before the two year standing committee appointment term expires.

### Conclusion

It is this Office's opinion that a court would likely find the Rules of Greenville County Council, as amended on July 18, 2017, authorize the Chairman to both "change" standing committee membership "as merited" and to make "additional appointments as needed" prior to the expiration of such a committee membership's two year term. 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 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 (1976 Code, as amended). If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

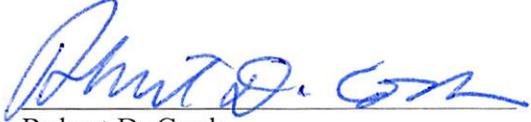
Sincerely,



Matthew Houck  
Assistant Attorney General

The Honorable Garry R. Smith  
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REVIEWED AND APPROVED BY:

A handwritten signature in blue ink, appearing to read "Robert D. Cook", written over a horizontal line.

Robert D. Cook  
Solicitor General