



ALAN WILSON
ATTORNEY GENERAL

January 2, 2018

Councilman Stephen W. Tumbleston and Councilman William Waters
Town of Ravenel
5962 Highway 165, Suite 100
Ravenel, SC 29470

Dear Mr. Tumbleston and Mr. Waters:

Attorney General Alan Wilson has referred your letter dated November 6, 2017 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

Issue (as quoted from your letter):

"The Town of Ravenel has been paying our Attorney as a W-2 employee since 2001. The Attorney also bills the town for additional services rendered that are performed by his private law practice. The Attorney works less than 20 hours per week and has a full-time law practice. ... The Town of Ravenel established a 20-hour per week threshold as full-time status in order for employees to receive health insurance benefits. ... In February 2001 the Town of Ravenel submitted paper work classifying the Attorney as a full-time employee. He has been receiving state benefits as a full-time employee since 2001 although he has a law practice and has never worked the required 20 hours per week. ... Can you please advise your opinion if this financial arrangement is legal and ethical, and if not please advise the proper procedures the town should be following with regards to his compensation?"

Our reply:

First and foremost, let us direct you to a few sources for insight into your situation. As you may well be aware, the South Carolina Ethics Commission enforces the State Ethics Act and may "initiate or receive complaints and make investigations" of alleged violations. S.C. Code Ann. §§ 8-13-310, 8-13-320. Thus, we advise consulting the Ethics Commission if you think there may be a potential violation of the Ethics Act. Additionally, lawyers are subject to the South Carolina Rules of Professional Conduct for Lawyers which are found in Rule 407 of the South Carolina Appellate Court Rules. The Commission on Lawyer Conduct investigates complaints of lawyer misconduct pursuant to Rule 413 of the Appellate Court Rules. Moreover, the South Carolina Bar has a Risk Management Director and Counsel in addition to an ethics committee that issues ethics and advisory opinions. We advise pursuing these resources if you have questions regarding lawyer conduct. Questions regarding the State Health Plan and its legal requirements should be directed to the Public Employment Benefit Authority (PEBA). See S.C. Code Ann. § 9-1-10 et seq.

Regarding the compensation and employment of an attorney, the Town should be following its procurement policy based on guidelines developed by the State Fiscal Accountability Authority and the Procurement Policy Committee. See S.C. Code Ann. § 11-35-50. This Office has previously opined regarding a political subdivision's contractual employment of an attorney that it need only go follow its

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own procurement policy. See Op. S.C. Att'y Gen., 2014 WL 1398599 (S.C.A.G. January 14, 2014). Regarding employment, South Carolina law requires, among other things, that:

Except as otherwise provided or as prohibited by the Constitution of this State, the compensation of all officers and employees of the State or any political subdivision, department or agency thereof shall be as from time to time provided by the General Assembly or the particular political subdivision, department or agency concerned, as the case may be.

S.C. Code Ann. § 8-15-10 (1976 Code, as amended). Thus, the Town should review its employment contract with the attorney and review its procurement policy based on guidelines developed by the State Fiscal Accountability Authority and the Procurement Policy Committee. Moreover, the Town may want to seek the services of a private law firm that specializes in employment law to avoid future concerns for issues that extend beyond procurement.

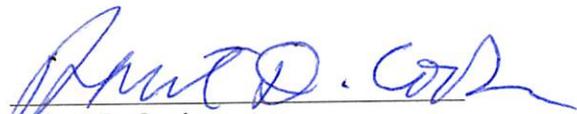
We hope these resources will assist in addressing your ethical and legal concerns. This opinion only addresses some of the sources in the subject area, but we can address other authority or additional questions in a follow-up opinion. If you have any additional questions or issues, please let us know.

Sincerely,



Anita (Mardi) S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General