



ALAN WILSON
ATTORNEY GENERAL

May 11, 2018

The Honorable John T. McClary, Jr.
Mayor, Town of Hilda
P.O. Box 157
Hilda, SC 29813

Dear Mayor McClary:

You have requested an opinion from this Office regarding control of the Hilda Fire Department, which is a volunteer fire department established by town ordinance. You explain that:

The [property] that the fire department is built on is in the name of Town of Hilda. The Town pays all insurances on the property and Fire vehicles and no other moneys are budgeted for operation other than Barnwell County. Barnwell County actually owns some of the trucks that are housed in our building and the Fire Department receives some moneys from the county for operations mainly for calls outside our municipality.

Additionally, you explain that the Fire Chief will not allow the Hilda Town Council or you access to any of the financial documents concerning the Fire Department and the Town Council and you have been removed from all of the Fire Department's bank accounts. Furthermore, you and the Town Council would like to use a retired fire truck in the town park for children to play on but the Fire Chief does not want the fire truck used in such a manner.

We understand that the Town of Hilda is organized as a Mayor-Council form government and that the Town has a population of approximately 447 persons.¹ Based upon our follow-up telephone conversations, our understanding is that the Town of Hilda does not provide the Fire Department with municipal funds. Instead, the Fire Department receives funds for operation from State tax proceeds and from Barnwell County.

¹This understanding is based upon the website of the Municipal Association of South Carolina: www.masc.sc/about/sc-municipalities/municipal-online-directory/detail-key-demographics?itemid=170DDB71-9EBC-4562-8C14-A318BC340134.

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Finally, we also understand that your specific questions are:

1. Who has operational control over the fire equipment, such as fire trucks?
2. Who has the power to remove the Fire Chief?
3. Does the Town have the right to review financial records of the Fire Department?

LAW/ANALYSIS:

Before answering your questions in turn, we begin by setting out some of the general law as background to our specific answers. As you no doubt are aware, the South Carolina General Assembly has expressly given municipalities the authority to provide fire protection services to its residents through the enactment of Section 5-25-20 of the South Carolina Code, which provides:

[a]ny city or town council of a city or town of not less than one hundred inhabitants may equip and control a fire department for the protection of such city or town in such way as it deems necessary. . . .

S.C. Code Ann. § 5-25-20 (2004). Our Office also has previously opined that the powers granted to municipalities under the Home Rule Act include the ability to provide fire service to its residents:

[s]ection 5-7-30 of the South Carolina Code (Supp. 2008) gives municipalities the power to 'enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of powers in relation to roads, streets, markets, law enforcement, health, and order in the municipality or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it' While this provision does not specifically give municipalities the authority to provide fire protection services to their residents, our Supreme Court held that providing fire service promotes the security, health, order, and general welfare of municipalities as contemplated by section 5-7-30. See Hospitality Ass'n of South Carolina, Inc. v. County of Charleston, 320 S.C. 219, 227, 464 S.E.2d 113, 118 (1995).

Op. S.C. Atty. Gen., 2009 WL 3658275, at *1 (Oct. 7, 2009).

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According to the Town of Hilda Code of Ordinances that you provided to us, the Town Council has exercised this grant of power and established an "adequate, modern and efficient fire department" which is to be "maintained under the supervision of the Town Council and Fire Chief and subject to such rules and regulations as shall be adopted from time to time for its orderly operation." Town of Hilda Code of Ordinances, art. IV, § 9.401(a).

1. Who has operational control over the fire equipment, such as fire trucks?

We believe that a court faced with this question would conclude that the Town has exercised its power under Home Rule to delegate control of fire equipment to the Fire Chief. The ordinances which you provided to us establish that the Fire Chief is the "chief administrative officer of the Fire Department." Town of Hilda Code of Ordinances, art. IV, §§ 9.402, 9.403(b). The ordinances specifically grant the Fire Chief the "management at all fires" and authority over all department personnel, as well as the ability to "regulate the handling of all apparatus." Town of Hilda Code of Ordinances, art. IV, § 9.403(b). Furthermore, the ordinances expressly grant the Fire Chief control over the fire equipment by providing the following:

[i]t shall be unlawful for any unauthorized person to use, borrow or damage any equipment of the Fire Department without the express consent of the Fire Chief. 'Equipment' shall mean all vehicles, firefighting apparatus, supplies, facilities or other material belonging to the Fire Department.

Town of Hilda Code of Ordinances, art. II, § 9.208(a).

A court faced with the question presented in your letter most likely would construe the ordinances cited above to give effect to the intent of the legislative body which passed them. In the words of the South Carolina Supreme Court:

It is well settled that when interpreting an ordinance, legislative intent must prevail if it can be reasonably discovered in the language used. An ordinance must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. In construing ordinances, the terms used must be taken in their ordinary and popular meaning.

Charleston Cnty Parks & Recreation Com'n v. Somers, 459 S.E.2d 841, 843, 319 S.C. 65, 67-68 (1995).

We believe that a court faced with your question here would conclude that the plain language of the ordinances set out above manifestly demonstrates a legislative intent to vest the Fire Chief with operational control over the equipment of the Hilda Fire Department. In

particular, we believe that such a court likely would rely upon the provisions that the Fire Chief "regulate[s] the handling of all apparatus," and that the ordinances criminalize the use or borrowing of any equipment "without the express consent of the Fire Chief." Town of Hilda Code of Ordinances, art. IV, § 9.403(b); art. II, § 9.208(a). Moreover, such equipment is defined broadly and includes "vehicles, firefighting apparatus, supplies, facilities or other material belonging to the Fire Department." Art. II, § 9.208(a). For this reason, it is the opinion of this Office that the Fire Chief of the Hilda Fire Department has operational control over the fire equipment owned by that department, such as fire trucks, as established in the ordinances. See Charleston Cnty Parks & Recreation Com'n v. Somers, 459 S.E.2d at 843, 319 S.C. at 67-68 (opining that the legislative intent apparent in the plain language of an ordinance must control its interpretation).

2. Who has the power to remove the Fire Chief?

We believe that a court faced with this question would conclude that the General Assembly has established that where a town the size of Hilda which has adopted the Mayor-Council form of government, as Hilda has, the mayor of that town has statutory authority to terminate the Fire Chief. S.C. Code Ann. § 5-9-30(1) (2004).

As you no doubt are aware, the Hilda Town Ordinances provide that the Hilda Town Council adopted the Mayor-Council form of government, wherein the mayor is the chief administrative officer of the municipality. Town of Hilda Code of Ordinances, ch. 1, art. I; see also S.C. Code Ann. § 5-9-30 (2004). Under this form of government the mayor generally is "responsible to the council for the administration of all city affairs placed in his charge," and also is expressly granted certain enumerated powers and duties including the power:

- (1) to appoint and, when he deems it necessary for the good of the municipality, suspend or remove all municipal employees and appointive administrative officers provided for by or under Chapters 1 through 17, except as otherwise provided by law, or personnel rules adopted pursuant to Chapters 1 through 17. He may authorize any administrative officer who is subject to his direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency;
- (2) to direct and supervise the administration of all departments, offices and agencies of the municipality except as otherwise provided by Chapters 1 through 17;

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S.C. Code Ann. § 5-9-30(1)&(2) (2004).

It appears that the express power set out in Section 5-9-30(1) to remove all appointive administrative officers and municipal employees, except as otherwise provided by law, is dispositive of this question. § 5-9-30(1). Indeed, in 1979 the South Carolina Supreme Court relied upon Section 5-9-30(1) to affirm the power of the Mayor of the Town of Batesburg under the mayor-council form of government to dismiss a volunteer firefighter from the municipal fire department. Miller v. Town of Batesburg, 273 S.C. 434, 257 S.E.2d 159 (1979). In that opinion our State's highest Court reasoned:

It follows by force of reason that the Town of Batesburg possesses the necessary authority to determine who may serve as a member of the municipal fire department, and under the mayor-council form of municipal government this authority is exercised by the mayor.

273 S.C. at 437, 257 S.E.2d at 160.

In order to be as responsive as possible to your question and to avoid confusion in the future, we take this opportunity to set out a few additional, relevant points of law. Cf. S.C. Code Ann. 5-7-160 (2004) (establishing that "all powers of the municipality are vested in the council, except as otherwise provided by law"); see also Op. S.C. Att'y Gen., 2006 WL 1207275 (April 27, 2006) (discussing the interplay of the statutory powers of a mayor and a town council in a mayor-council form of government to appoint and remove certain town employees). Our Office has formerly concluded "that the language 'except as otherwise provided by law' [as found in Section 5-9-30(1)] does not include a municipal ordinance but, instead, has reference to statutory law only." Op. S.C. Att'y Gen., 1978 WL 34682, at *1 (Feb. 2, 1978). We also have interpreted that same phrase such that "if an appointive office is provided for by statute, the appointment of the official who occupies that office must be made pursuant thereto." See Op. S.C. Att'y Gen., 2013 WL 1695514, at *3 (Mar. 28, 2013) (citing Ops. S.C. Att'y Gen., December 17, 1976; September 27, 1996; January 6, 1977.)

As of this writing, our research has not identified a statute or other legal authority such that the appointment of the Fire Chief would otherwise be provided for by law. Although Section 5-25-110 provides generally that "[t]he city council or governing body of every city and incorporated town shall appoint a chief of the city or town fire department," S.C. Code Ann. § 5-25-110 (2004), that Section is qualified by section 5-25-10, which provides that "[n]one of the

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provisions of this chapter², except [sections not relevant here], shall apply to towns of less than five thousand inhabitants. . . ." S.C. Code Ann. § 5-25-10 (2004). Because the Town of Hilda has a population of less than five thousand persons, Section 5-25-110 does not apply. Accordingly, because the Hilda Fire Chief is an appointed administrative officer whose appointment is not otherwise provided for by law, we believe that a court would rely upon Miller v. Town of Batesburg conclude that the Mayor of Hilda have the discretion to remove the Fire Chief "when [the Mayor] deems it necessary for the good of the municipality" pursuant to Section 5-9-30(1). Miller v. Town of Batesburg, 273 S.C. at 437, 257 S.E.2d at 160.

This conclusion also is supported by other statutes regarding the Mayor-Council form of government. For example, Section 5-9-40 grants the mayor authority and appointment power over the municipal department heads, by providing that "[a]ll 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. . ." S.C. Code Ann. § 5-9-40 (2004). Your question on the authority to terminate also touches on the role of the Mayor in directing and supervising the Hilda Fire Department, which is a department of the Town of Hilda. Section 5-9-30(2) charges the mayor with directing and supervising "the administration of all departments, offices and agencies of the municipality except as otherwise provided by Chapters 1 through 17..." S.C. Code Ann. § 5-9-30(2) (2004) (emphasis added). While we believe that Section 5-9-30(1) and Miller v. Town of Batesburg are controlling in this case, we bring up these additional points of law to highlight the consistency of the conclusion with the role of a mayor in a Mayor-Council form of government. For these reasons, it is the opinion of this Office that the Hilda Mayor has the power to remove the Hilda Fire Chief "when he deems it necessary for the good of the municipality." See Miller v. Town of Batesburg, 273 S.C. at 437, 257 S.E.2d at 160.

3. Does the Town have the right to review financial records of the Fire Department?

In your letter, you express concern that the Fire Chief will not allow you or the Town Council access to any of the financial documents of the Fire Department. As noted in a 2013 opinion, "this Office has long been of the opinion that each member of a county or city council should be given access to all records of the county or city (whichever is applicable)." Op. S.C. Att'y Gen., 2013 WL 3362070 (June 19, 2013); see also Op. S.C. Att'y Gen., 2014 WL 5439610 (October 16, 2014) ("[A] council member, regardless of the form of city or county government, should have access to personnel records and financial documents, such as cell phone records

² "Chapter" here refers to the "Fire Prevention" chapter of the laws regarding Municipal Corporations. See S.C. Code Ann. § 5-25-10 et seq. (1976 Code, as amended).

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which are paid for by the town and professional contract documents, in order to gather information."). This conclusion has been based in part on the opinion of the South Carolina Supreme Court in Wilson v. Preston, wherein the Court considered the request of a county council member in a council-administrator form of government to issue a mandamus which would have required the county administrator to present financial records (including general ledger reports) more often than they had been and to include unaudited records. Wilson v. Preston, 378 S.C. 348, 662 S.E.2d 580 (2008). The Court declined to issue a mandamus but expressly emphasized that the council member did have access to the documents and the dispute was based on the timing of access. *Id.* at 356, 662 S.E.2d at 584-85. ("[T]he Administrator has not denied [the council member] access to the documents. The Administrator, in his discretion, has delayed the delivery of some documents") In fact the Court expressly stated that "the Administrator cannot deny a council member access to county financial documents," and expanded on this statement in a footnote:

The dissent disagrees with "the majority's decision that mandamus cannot issue to compel the Administrator to disclose financial information to a member of county council." However, this is not our holding. We reiterate the Administrator cannot deny a council member access to county financial documents. If such a denial occurs, issuing a writ of mandamus is clearly appropriate.

Id. & n.1.

We affirm the conclusion of our prior opinions read in the context of Wilson v. Preston and other applicable law, and we take this opportunity to highlight some additional points of law relevant to your question in the context of the Mayor-Council form of municipal government. In our prior opinions, our Office explains that the mayor's duty to "supervise and direct" under Section 5-9-30(2) means that the mayor oversees the daily functioning and operations of the municipal departments. See Ops. S.C. Atty. Gen., 1980 WL 121219, at *1 (May 12, 1980); 1979 WL 42931, at *1 (Apr. 17, 1979); 2012 WL 440544, at *2 (Jan. 13, 2012). Furthermore, Section 5-9-30(6) charges the Mayor with the power and duty "to submit to the council and make available to the public a complete report on the finances and administrative activities of the municipality as of the end of each fiscal year." In a prior opinion this Office has noted that:

Section 5-9-30(6). . . could be read to imply that the mayor has charge of the day-to-day financial records of the town. *See also* S.C. Code Ann. § 30-1-20 (2007) (making the "chief administrative officer of any agency or subdivision or any public body in charge of public records ... the legal custodian of [those] records").

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Op. S.C. Atty. Gen., 2012 WL 440544, at *2 (Jan. 13, 2012).

Consistent with these statutory provisions and our prior opinion, we believe that a court most likely would conclude generally that the Mayor in a Mayor-Council form of government must have access to financial records of municipal departments and agencies in order to fulfill their responsibility to "supervise and direct" the department and to provide a complete report on the town's use of public funds to the council and to the public. Although the power to review financial records is not expressly granted under Section 5-9-30, that access is indispensable to the faithful execution of the responsibilities charged to such a mayor by the General Assembly in Subsections 5-9-30(2) and 5-9-30(6), among others.

For all these reasons it is the opinion of this Office that the Mayor of Hilda and the members of the Town Council must be given access to the financial records of the Hilda Fire Department. This opinion should not be read in any way to derogate lawful and appropriate administrative practices approved by the Town, such provisions which govern audits, signatory authority on checks, or direct access to a bank account holding municipal funds. Cf. Wilson v. Preston, 378 S.C. 348, 662 S.E.2d 580 (2008). We note here simply that prior opinions of this Office speak directly to this question, and also that the Mayor must have access to financial records of municipal departments in order to faithfully execute their statutory responsibilities.

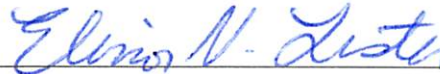
Finally, we understand that the Town receives some funds from a private foundation to be used by the Fire Department. This opinion should not be construed as a statement regarding municipal access to the records of that foundation for several reasons, including that answering such a question would require referencing the foundation's constitution and bylaws and therefore would be a factual determination outside the proper scope of a legal opinion of this Office. See Op. S.C. Atty. Gen., 2010 WL 3896162 (Sept. 29, 2010) ("This Office is not a fact-finding entity; investigations and determinations of fact are beyond the scope of an opinion of this Office and are better resolved by a court").

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CONCLUSION:

For the reasons set forth above, it is the opinion of this Office that a court most likely would conclude that the Hilda Fire Chief has operational control over the fire equipment, such as fire trucks; that the Mayor of Hilda has the power to terminate the Hilda Fire Chief when the Mayor "deems it necessary for the good of the municipality"; and that the Mayor and the members of the Town Council must be given appropriate access to the financial records of the Fire Department.

Sincerely,




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Assistant Attorney General



David S. Jones
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
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