

1974 S.C. Op. Atty. Gen. 211 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3817, 1974 WL 21323

Office of the Attorney General

State of South Carolina

Opinion No. 3817

July 1, 1974

***1 Re: § 47–232.1, Code of Laws of South Carolina, 1962 as amended**

William M. Bruner, Esquire
Attorney at Law
Suite 209, Rainbow Harbor
5001 N. Kings Highway
Myrtle Beach, South Carolina 29577

Dear Mr. Bruner:

With reference to your letter and our telephone conversation of June 24, 1974, and your letter of June 25, 1974, it is the opinion of this office that the governing body or mayor of a municipality cannot delegate the authority they possess by virtue of § 47–232.1, Code of Laws of South Carolina (1962) (Supp.)

Section 47–232.1 provides in part:

The governing body or mayor of any incorporated municipality of the State upon the request of the governing body or mayor of any other incorporated municipality of the State may send any law-enforcement officer or officers to assist the law-enforcement officers of such requesting municipality in the performance of their duties in cases of emergency. A complete record of the request together with the names of the officers sent shall be recorded in the minutes of the next regular or special meeting of the governing bodies of both the requesting and the sending municipalities.

Such assistance shall be rendered only in emergencies, and such emergency shall be declared by the mayor of the requesting municipality, or, in his absence, the person normally acting in his stead in case of absence.

This statute clearly provides that the governing body or mayor of an incorporated municipality must, in its discretion, decide when an emergency exists and declare such an emergency. The statute further provides that upon receiving a request for assistance, in its discretion, the governing body or mayor of any incorporated municipality may send assistance to the requesting municipality.

Since the powers exercised in this statute are discretionary ones, the general rule is that 'in the absence of express authority the governing body of the [municipal] corporation must itself exercise general discretionary powers; they cannot be exercised by any other board.' 62 CJS, Municipal Corporations § 154 at 316 (1949).

For the above reasons, this office is in the opinion that the proposed agreement between the City of Myrtle Beach and the Town of North Myrtle Beach in which the decisions requesting such assistance by one municipality and the honoring of such a request by the other be delegated to respected chiefs of police would be invalid absence statutory authority allowing such delegation.

Yours very truly,

M. Elizabeth Crum

Assistant Attorney General

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