



ALAN WILSON
ATTORNEY GENERAL

July 02, 2019

Mr. Larry C. Smith, Esquire
Attorney for Richland County
Post Office Box 192
Columbia, South Carolina 29202

Dear Mr. Smith:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter asks the following:

South Carolina Code Ann. § 4-9-110 states:

The council shall select one of its members as chairman, except where the chairman is elected as a separate office, one as vice-chairman and such other officers as are deemed necessary for such terms as the council shall determine, unless otherwise provided for in the form of government adopted. The council shall appoint a clerk to record its proceedings and perform such additional duties as the council may prescribe. The council after public notice shall meet at least once each month but may meet more frequently in accordance with a schedule prescribed by the council and made public. All meetings shall be conducted in accordance with the general law of the State of South Carolina affecting meetings of public bodies. Special meetings may be called by the chairman or a majority of the members after twenty-four hours' notice.

The council shall determine its own rules and order of business. It shall keep a journal in which shall be recorded the minutes of its proceedings which shall be open to public inspection. (Emphasis added)

The question posed is whether the language is intended to require a council to literally have a meeting in each calendar month? Or is perhaps the true spirit and intent of the statute to ensure councils meet regularly, i.e. 12 times a year, while leaving the councils to decide if each actual calendar month should include a meeting as a part of its regular rules and administration of business?

For example, if a council regularly meets over 22 times in a calendar year, but does not meet in one of the 12 calendar months, would that be a violation of the statute, a technical violation with no real consequences, or statutory compliance?

Law/Analysis

It is this Office's opinion that a court likely would hold that S.C. Code Ann. § 4-9-110 requires county councils to hold publically noticed meetings at least once in each and every calendar month. The language emphasized in the request letter suggests the directive that "council shall determine its own rules and order of business" could be read to allow modification of another directive in that same statute that "council after public notice shall meet at least once each month." This opinion will examine Section 4-9-110 according to the principles of statutory interpretation. Statutory interpretation of the South Carolina Code of Laws requires a determination of the General Assembly's intent. Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) ("The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible."). Where a statute's language is plain and unambiguous, "the text of a statute 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).

The text of Section 4-9-110 appears to clearly demonstrate the General Assembly's intent that a county council must meet at least once every month. In relevant part the statute reads, "The council after public notice shall meet at least once each month but may meet more frequently in accordance with a schedule prescribed by the council and made public." Id. The General Assembly's intent regarding how often a county council must meet is plainly stated to be "at least once each month." The American Heritage Dictionary defines "each" to mean "being one of two or more considered individually; every." American Heritage Dictionary 430 (3rd ed. 1993); see also Dictionary.com, <http://www.dictionary.com/browse/each> ("every one of two or more considered individually or one by one."). The hypothetical scenario posed in the request letter in which a council "meets over 22 times in a calendar year, but does not meet in one of the 12 calendar months" would not comply with the literal language of the statute. If the General Assembly had instead used language directing county council to meet "an average of once a month in a calendar year," such a scenario could be considered consistent. However, the plain and unambiguous text of the statute is the best evidence of legislative intent and it mandates that county council meet at least once in each and every calendar month.

It is this Office's opinion that the language "determine its own rules and order of business" in Section 4-9-110 does not authorize a county council to adopt rules of procedure which are inconsistent with the general law of the state. This Office has historically interpreted Section 4-9-110 to authorize county councils to adopt their own rules regarding parliamentary procedure. See Op. S.C. Att'y Gen., 1980 WL 121084 (March 10, 1980) ("Rules of order are not ordinances, but are merely the forms of procedure for enacting ordinances."). Our state courts generally defer to the parliamentary procedure rules adopted by county councils as long they do not conflict with other law. See McSherry v. Spartanburg Cty. Council, 371 S.C. 586, 590, 641

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S.E.2d 431, 434 (2007) (“Thus, there is neither a constitutional provision nor a statutory requirement on which this Court could base an invalidation of Council's rules and procedures.”); see also Op. S.C. Att’y Gen., 1980 WL 121101 (March 18, 1980) (“[S]uch rules are permissible so long as they do not conflict with general law.”). Therefore, a court would not find that Section 4-9-110 authorizes county council to adopt rules and procedures that would permit the council to avoid meeting at least once each month.

Conclusion

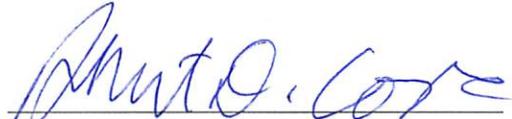
As is discussed more fully above, it is this Office’s opinion that a court likely would hold that S.C. Code Ann. § 4-9-110 requires county councils to hold publically noticed meetings at least once in each and every calendar month.

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General