



ALAN WILSON
ATTORNEY GENERAL

October 5, 2020

William "Bump" Roddey, Member
York County Council
Post Office Box 66
York, South Carolina 29745-0066

Dear Councilman Roddey:

We received your letter requesting an opinion from this Office concerning the ability of a county council member to serve as a licensed bail bondsman in South Carolina.

Law/Analysis

Chapter 53 of title 38 of the South Carolina Code governs the licensing of bail bondsmen. As you noted in your request letter, section 38-53-190 of the South Carolina Code (2015) specifies persons ineligible to serve as bail bondsmen. This provisions states:

No sheriff, deputy sheriff, other law enforcement officer, judicial official, attorney, parole officer, probation officer, jailer, assistant jailer, employee of any court of this State, or other public employee assigned to duties relating to the administration of the court may become a surety on a bail bond for any person. No person covered by this section may act as agent for any bonding company or professional bondsman, nor may he have an interest, directly or indirectly, in the financial affairs of any firm or corporation whose principal business is acting as bondsmen. Nothing in this section prohibits any person designated above from being a surety upon the bond of his spouse, parent, brother, sister, child, or descendant.

S.C. Code Ann. § 38-53-190.

Section 38-53-190 does not specify that county council members are prohibited from being licensed bail bondsmen. We presume your question lies in whether a county council member is considered to be a "public employee assigned to duties related to the administration of the court . . ." In your letter, you referred to an opinion issued by this Office in 2013 addressing whether a city council member is prohibited from becoming a licensed bail bondsman under section 38-53-190. Op. Att'y Gen., 2013 WL 3133640 (S.C.A.G. Jun. 7, 2013). In that opinion, we determined that while the city council has the authority to appoint municipal judges and set their compensation,

“the council’s members have no duties or powers related to the administration of the municipal court.” Id. We explained

our Legislature has expressly provided that municipal courts are part of the unified judicial system of this state. See § 14-25-5(a) (“The council of each municipality in this State may, by ordinance, establish a municipal court, which shall be a part of the unified judicial system of this State”). Under Article V, § 4 of the South Carolina Constitution, the Chief Justice of the Supreme Court is designated the “administrative head of the unified judicial system” with the power to appoint personnel “necessary to aid in the administration of the courts. This constitutional provision states that the Supreme Court has the power to “make rules governing the administration of all courts of the State” Id. Moreover, Article VIII, § 14 expressly prohibits a local government from enacting ordinances which set aside, inter alia, “the structure for and *the administration of the State’s judicial system* (Emphasis added); see also Douglas v. McLeod, 277 S.C. 76, 80, 282 S.E.2d 604, 606 (1981) (“Article VIII effectively withdraws administration of the State judicial system from the field of local concern”). Therefore, while it is true that city council appoints municipal judges, a city council has no power or responsibility with regards to the administration of a municipal court, a matter which rests solely with the Supreme Court and the Chief Justice. See Op. S.C. Att’y Gen., 1996 WL 549582 (Aug. 27, 1996) (“the Supreme Court maintains oversight over the Municipal Court and its judges as it does any other court in the unified judicial system”).

Id.

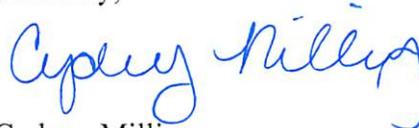
County councils similarly have no authority over the administration of county courts. Unlike municipal judges, council councils have no involvement in the appointment of judges that serve at the county level. Circuit court judges are appointed by the Legislature, who also provides their salary. S.C. Const. art. V, § 13 (2009); S.C. Code Ann. § 14-5-120 (2017). Furthermore, county councils are not involved in the administration of the state’s judicial system. Like municipal courts, the Chief Justice of the Supreme Court oversees the administration of circuit courts. S.C. Const. art. V, § 4 (2009) (stating the Chief Justice of the South Carolina Supreme Court is the administrative head of the unified judicial system). Counties are also prohibited under the state constitution from interfering in the administration of the state’s judicial system. S.C. Const. art. VIII, § 14 (2009) (prohibiting local governments for interfering with the structure and administration of the state’s judicial system). Accordingly, we believe section 38-53-190 does not prohibit county council members from becoming bail bondsmen.

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Conclusion

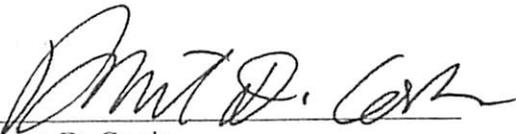
Section 38-53-190 prohibits certain individuals from serving as bail bondsmen. This provision does not specify that members of county councils are included among those prohibited from serving as bail bondmen. Moreover, we do not believe a county council member is an "employee assigned to duties relating to the administration of the court" as specified in section 38-53-190. As such, we are of the opinion that a member of a county council would not be prohibited from serving as a bail bondsman.

Sincerely,



Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General