



HENRY McMASTER
ATTORNEY GENERAL

May 8, 2009

The Honorable Steve Powers
Member, Florence City Council
180 North Irby Street
Florence, South Carolina 29201-3431

Dear Councilman Powers:

We understand you wish to request an opinion of this Office on behalf of the Florence City Council ("City Council"). By your letter, you posed the following two questions:

Is it lawful for an ordinance amending Section 2-24(c) of the Code of Ordinance of the City of Florence to be passed assigning the function of serving as the presiding officer at city council meetings to a council member other than the mayor or is such action precluded by Title 5 of the South Carolina Code of Laws or some other state law?

...

Is it beyond the authority of the Mayor in a council-manager form of government to represent City support for and seek federal funding for projects on behalf of the City without receiving council approval for the proposed projects?

Law/Analysis

Our Supreme Court explained in Bugsy's, Inc. v. City of Myrtle Beach, 340 S.C. 87, 95, 530 S.E.2d 890, 894 (2000):

Where an ordinance is not preempted by State law, the ordinance is valid if there is no conflict with State law. In order for there to be a conflict between a state statute and a municipal ordinance, both must contain either express or implied conditions which are inconsistent and irreconcilable with each other. If either is silent where the other speaks, there is no conflict.

As you mentioned in your letter, section 5-9-30(3) of the South Carolina Code (2004), stating the powers and responsibilities of a mayor, provides that a mayor has the power to “to preside at meetings of the council” However, as you point out, this provision is found under the portion of the Municipal Code governing mayor-council forms of municipal government. You informed us that the City of Florence (the “City”) maintains a council-manager form of municipal government. Thus, we do not believe that section 5-9-30(3) applies to the City. As such, we do not find any provision of State law discussing who shall preside over city council meetings acting under a council-manager form of municipal government. Therefore, finding no conflict with State law, we believe the City may amend its Code of Ordinances to allow a City Council member other than the Mayor to preside over its meetings.

Moreover, in an opinion of this Office issued in 1995, we discussed whether a mayor serving under a council-manager form of municipal government has sole authority to preside over council meetings. Op. S.C. Atty. Gen., December 6, 1995. First, we cited section 5-7-250 of the South Carolina Code (2004). This provision, found in the general provisions governing all municipalities, states: “The council shall determine its own rules and order of business” S.C. Code Ann. § 5-7-250(b). Additionally, we noted that unlike the provision found in the law governing mayor-council forms of government, the law governing council-manager forms of municipal government does not contain a provision specifically giving the mayor the authority to preside over council meetings. Op. S.C. Atty. Gen., December 6, 1995. Thus, we ultimately concluded that

in the council-manager form of municipal government, the mayor is not required by statute to be the presiding officer of the council. Section 5-7-250(b) authorizes municipal councils to establish their own rules, and I am of the opinion that selection of the presiding officer under the council-manager form of government could be within those rules.

Id. Accordingly, this opinion further supports our position that the City has the authority to determine who shall serve as the presiding officer at City Council meetings.

As for your concern about the Mayor’s authority to write a letter representing the City’s support for certain projects, we first note that we were unable to find any law prohibiting a mayor from writing a letter in support of a particular project without the consent of the council. However, according to section 5-7-160 of the South Carolina Code (2004):

All powers of the municipality are vested in the council, except as otherwise provided by law, and the council shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the municipality by law. A majority of the total membership of the council shall constitute a quorum for the purpose of transacting council business.

In a council-manager form of municipal government, “[a]ll legislative powers of the municipality and the determination of all matters of policy shall be vested in the municipal council, each member, including the mayor, to have one vote.” S.C. Code Ann. § 5-13-30 (year). In addition, this Office has recognized the general rule that:

[a] municipal governing body cannot delegate to a municipal officer or even to one of its own committees the power to decide legislative matters properly resting in the judgment and discretion of that body or to one member of the governing body. Thus, acts by individual members of a public body cannot bind the municipality unless officially sanctioned in accordance with a statute. The members of the governing body are chosen by the people to represent the municipality and they are charged with a public trust and the faithful performance of their duties and the public is entitled to the judgment and discretion of each member although the governing body may refer matters coming before it to a committee for examination and fact-finding.

Op. S.C. Atty. Gen., November 2003 (quoting 56 Am.Jur.2d, Municipal Corporations, § 134). As the United State Supreme Court explained in Cooley v. O’Connor, 79 U.S. 391, 398(1870): “It is true that when an authority is given jointly to several persons they must generally act jointly, or their acts are invalid.” Based on the above authority, we believe that while the Mayor may write a letter indicating his or her support of a particular project, the Mayor cannot act to bind the City unless other members of the City Council join the Mayor in taking formal action.

With your request letter, you included copies of two letters sent by the Mayor to Representative James Clyburn. The letters appear to advocate the establishment of a multimodal transportation center on a specific parcel of property and argue the benefits of establishing such a facility. One could infer the City’s support of the project from the letter. However, the letter itself does not appear to bind the City. If the City Council as a whole does not support the project, the letters may be viewed as misleading of the City’s position with regard to the projects. However, we do not believe the mayor exceeded his authority in writing the letters.

Nonetheless, one of the letters includes information regarding the cost of the project and states that this information is included “[t]o clarify our application” We are not privy to any of the details surrounding the Mayor’s letters. But, if the Mayor submitted an application for federal funds on behalf of the City, we believe this type of action would require involvement of the entire City Council and more specifically, would require formal action by the City Council if the application acts to bind the City. Nonetheless, because we do not have an understanding of all of the circumstances involved and because this Office does not have the jurisdiction of a court to

The Honorable Steve Powers
Page 4
May 8, 2009

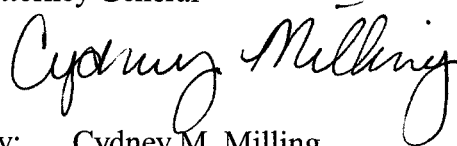
investigate and determine factual issues, we cannot opine as to whether the Mayor acted without authority outside of writing letters to Representative Clyburn. Op. S.C. Atty. Gen., June 27, 2006.

Conclusion

Because we do not find any State law requiring a mayor in a council-manager form of municipal government to preside over city council meetings, we believe the City may pass an ordinance assigning this function to a City Council member other than the Mayor. As for the Mayor's authority to write a letter in support of a particular project to a United States Congressman, we do not believe simply writing such a letter exceeds the Mayor's authority. However, if the letter or any other action by the Mayor acts to bind the City, we believe such action would require the involvement of the entire City Council and formal action taken by the City Council.

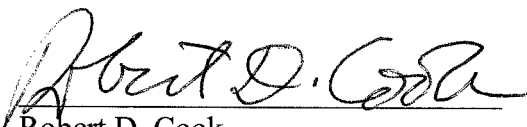
Very truly yours,

Henry McMaster
Attorney General



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