



ALAN WILSON
ATTORNEY GENERAL

July 18, 2024

Mr. Charlie Funderburk
City Manager
7725 Tega Cay Dr.
Tega Cay, SC 29708

Dear Mr. Funderburk:

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

Statement of Facts:

1. The City of Tega Cay ("City") is an incorporated South Carolina municipality.
2. The City has elected the council-manager form of government. (Code of Ordinances of the City of Tega Cay Chapter 2, Article I, Sec. 2.1 "The form of government shall be council-manager").
3. The City's ordinances provide that City Council shall be constituted of one mayor and four councilmembers, thereby constituting a voting total of five (5) and thus a quorum is three (3).
4. City ordinance Chap. 2, Article II, Division 2, Sec. 2-48 (e) provides: "Except for emergency meetings, all actions of the council shall be by majority vote of the council members constituting a quorum."
5. The City Attorney is not an employee of the City, is not paid a salary, and

6. Certain council members have expressed an opinion...

[REDACTED]

Q _____ p _____ q _____

position of City Attorney. It is referred to herein as "the Ordinance."

7. Article VI, Sec. 2-420 (3) of the Ordinance provides as follows:

~~"When called upon by at least two members of City Council to give advice and direction to City Council, with such advice or direction being related to City procedure, form, and law which may arise in the discharge of the duties of their respective offices."~~

8. Article VI Sec. 2-417 (B) (Appointment) of the Ordinance provides "A City Attorney shall serve a two (2) year term."

Questions Presented by Council on July 18, 2024

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city council the status of all such legal services.” Op. S.C. Att’y Gen., 1977 WL 24632 (September 15, 1977). The opinion found that the proposed ordinance did not apparently violate the South

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The Constitution provides only that “[t]he structure and organization governs

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duties, functions, and responsibilities of the municipalities shall be established by general law.” S.C. CONST. art. 8, § 8. There are no relevant provisions in

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Ordinance is consistent with the constitution and state law. See O. S.C. Art. I, § 2000 VIII

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fiduciary capacity.”). Therefore, council should ensure that adequate reporting and accountability processes are implemented.

A separate provision of the proposed ordinance appoints the City Attorney to “serve a term of two years.” Your letter asks whether this provision can bind a future city council to a specific term of service with a city attorney. It is this Office’s opinion that a city council cannot bind future councils by entering into an employment contract extending beyond the terms of its members. The South Carolina Supreme Court explained in *Piedmont Public Service District v. Cowart*, 324 S.C. 239, 241, 478 S.E.2d 836, 837 (1996), “The appointment or removal of a public officer is a

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governmental function that cannot be impaired by an employment contract extending beyond the terms of the members of the local governing body. Such a contract is not binding on the successors to the local governing body.” Accordingly, a future city council would be free to exercise its

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Matthew H

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Robert D. Cook
Solicitor General