

## Avoiding Mistakes Setting Council Compensation and Other Issues

Municipal Association of SC  
Annual Meeting - July 2014



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## Avoiding Unwanted Headlines

- Serving on council is hard enough without encountering unwanted publicity and scrutiny because of an inadvertent error.
- This session will cover some of the most common mistakes made and the correct way of conducting business.



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## Avoiding Unwanted Headlines

- Two types of potential errors
  1. Violation of statutory provisions
  2. Ethics Act violations
    - Section 8-13-700 (A) and (B) prohibit public officials from using position to gain personal economic benefit
- Any action resulting in a personal economic benefit is a potential ethics violation and requires extreme caution .



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## Council Compensation

S.C. Code § 5-7-170

- The council may determine the annual salary of its members by ordinance.
- There is no statutory limit
  - on the amount or type of compensation
  - or that compensation must be equal for all elected officials




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## Council Compensation

- An ordinance establishing or increasing such salaries is not effective until the start of the terms of two or more members elected at the next general election following the ordinance's adoption.
- A compensation change goes into effect for all members of council, not just the newly elected members.




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## Council Compensation

- The attorney general has concluded that an automatic, annual cost of living salary increase violates the statutory requirements for council action and the effective date for salary increases.

*Atty. Gen. Op. dated February 17, 1999*




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## Council Compensation

Can a portion of compensation be based on meeting attendance?

- There appears to be nothing that prohibits basing a portion of the compensation on actual attendance at council meetings.
- Such a requirement needs to be included in the compensation ordinance.



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## Council Compensation

Can the cost of health insurance and retirement benefits be included in council compensation?

- Council can determine whether or not to include fringe benefits in the compensation ordinance.
- The compensation ordinance should provide a clear description of the benefits.



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## Council Compensation

- PEBA requires municipal elected officials to participate in the state retirement system if the municipality participates in SCRS and the elected official earns more than \$9,000 per year.



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### Council Compensation

- As a general rule, health and retirement benefits should be no greater than what is offered city employees.
- Changes in benefits do not go into effect until the start date of the terms of two or more members elected at the next general election following adoption of an ordinance increasing salary or benefits.




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### Council Compensation

- This restriction does not apply to increases in insurance premiums or retirement contributions for group plans over which council has no control.
- Payment of bonuses to municipal elected officials is prohibited based on prior AG opinions.




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### Council Compensation

The state attorney general has issued opinions concluding that payment of cash in lieu of the city paying premiums for group health insurance or as reimbursement for expenses incurred by elected officials opting for private insurance violates both Article III, § 30 of State Constitution and SC Code of Laws § 5-7-170.




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## Expense Payments

- Members of council may receive “payment for **actual expenses incurred in the performance of their official duties** within limitations prescribed by ordinance.”  
*S.C. Code § 5-7-170*

- Council, by ordinance, has authority to prescribe or define what expenses are eligible for reimbursement as well as the terms and conditions of payment.




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## Expense Payments

- According to SC attorney general, statutory authorization does not exist for an expense allowance of a fixed amount to cover future unknown expenses including.
- This includes in-district expense allowances or discretionary expenditure accounts.
- Per diem allowances are questionable because there is generally no reconciliation with actual incurred expenses.




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## Expense Payments

- SC Supreme Court has ruled that a municipality may not pay for expenses of a spouse, guest or other person accompanying a municipal official in the performance of official duties.
- Such expenditures fail to meet the public purpose test.




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## Expense Payments

SC Ethics Commission has pursued members of council

- who have received a meal per diem but allowed the city to charge a group meal, intended to be covered by the per diem, on a city credit card
- who have received payments in lieu of health insurance coverage
- who have received salary supplements disguised as miscellaneous travel or expense allowances




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## Council Employment

SC Code of Laws, Section 5-7-180

- Except where authorized by law, the mayor or councilmember is prohibited from holding any other municipal office or municipal employment while serving the term for which he/she was elected.
- Interpretation of this section can be tricky.




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## Council Employment

- Mayor and councilmembers may not serve as a member of council and as
  - administrator or manager
  - municipal clerk
  - clerk/treasurer
  - an employee of their municipality.




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### Council Employment

- Under the council form or government, the council has all legislative, policy and administrative power.
- Council may delegate administrative powers to members of council.




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### Council Employment

- If the council member to whom administrative authority is delegated receives additional compensation, the compensation must be defined within the council compensation ordinance and is subject to the delayed implementation requirement for council salaries.




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### Council Employment

- Under the council form of government, a city council that delegates administrative authority has the right to withdraw that authority at any time.
- The SC Ethics Commission has required repayment when municipal elected officials have received compensation that was not properly approved.




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### Council Vacancies

- In the case of an absence, disability or vacancy in office, the mayor pro tempore acts or serves as mayor, exercising the mayor's authority but does not become the mayor.
- In the case of a vacancy or extended absence, the mayor pro tempore is entitled to receive the mayor's salary according to the state attorney general.




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### Council Vacancies

- When a vacancy occurs in the office of mayor or council, the remainder of the unexpired term is filled at the next regular election.
- If the vacancy occurs 180 days or more before the next general election, the municipality must order a special election. *Sections 5-7-200(b) and 7-13-190.*




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### Council Vacancies

- <180 days before next regular election, council seat remains vacant
- >180 days before next regular election, special election ordered
- A vacant municipal elected office cannot be filled by appointment.




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### Council Resignations

- SC Code of Laws does not specify a procedure for municipal council resignations.
- Local rules of procedure should address process.
- Council should act on accepting written or verbal resignations by majority vote of council.



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### Council Resignations

- Official council action is necessary to
  - establish that the office is officially vacant
  - avoid potential claims for salary and benefits should a dispute arise on the effective date of the resignation
- Rules of procedure should state that a resignation is irrevocable upon acceptance by council.



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