

UPTOWN

Model Employee Handbook for South Carolina Municipalities

by Linda Edwards of Gignilliat, Savitz & Bettis, LLP

Because the state court system has become increasingly reluctant to uphold the principle of employment at-will, especially when an employee handbook is involved, the General Assembly passed a law in March providing specific elements to include in an employee handbook to keep it from being considered a contract. For cities to be protected by the new law, council must take action after June 30, 2004 to approve an employee handbook with a specific disclaimer on the first page and on the other specific elements as defined by the new law.

Does your municipality's employee handbook comply with the new state law? Does your municipality even have written employment policies? Help is here.

The Municipal Association of South Carolina, the Municipal Personnel Association and Gignilliat, Savitz & Bettis, LLP are publishing the *Model Employee Handbook for South Carolina Municipalities*. The handbook is designed to meet the technical requirements of the new law and to comply with other state and federal employment laws. Its policies have been drafted to create as few

MASC Annual Meeting

July 15-18

Marriott Beach and Golf Resort,
Hilton Head Island

For a registration form, visit
www.masc.sc or call Denise Brown
at 803.933.1208.

Pre-registration deadline is June 24.

promises to employees as possible and to help employers deal with practical issues that arise in the employment relationship. Several of the policies include alternative language to use depending on each municipality's circumstances. Each policy is also accompanied by an explanation of what the policy is designed to accomplish.

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Update on cable communications law

by Brian Grogan of Moss & Barnett

Can cities obtain franchise fees on cable broadband services?

In a decision last fall, the 9th Circuit Court determined that high-speed cable modem service ("broadband") is not a "cable service" but rather a combination of interstate information services and telecommunications services. The decision, although not consistent with the Federal Communications Commission's (FCC) earlier declaratory ruling, prevents municipalities from obtaining cable television franchise fees on broadband services. On March 31, 2004, the 9th Circuit denied petitions for re-hearing the case, and it is anticipated that parties in the case will submit petitions for discretionary review to

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Most municipalities already have some set of employment policies, whether written or unwritten. The handbook is not intended to replace perfectly workable employment policies already in place. Rather, the Model Employee Handbook should be used as a resource by municipalities in reviewing current policies for legal and practical issues. The handbook is also intended to help municipalities with unwritten policies by putting these policies in writing.

The handbook is designed to be a starting point — not an ending point — for municipal employment policies. Many of the policies contain alternative language from which municipalities can choose. The Model Employee Handbook contains policies that not every municipality needs. For example, those with less than 50 employees do not need a Family and Medical Leave Act policy. By the same token, the Model Employee Handbook may also lack policies that some municipalities need due to their unique circumstances. Thus, the handbook is a useful resource for policy development, but it is not a set of policies that can be adopted without modification.

The handbook is not a vaccination against handbook litigation. The new legislation has not been tested in the courts and is effective only for policies issued after June 30, 2004. Several of the policies set out procedures for dealing with various employment situations, and municipalities that adopt the Model Employee Handbook's policies should ensure compliance with these procedures. Municipalities should have their policies reviewed by legal counsel to ensure compliance with the law.

The issues that arise from the employment relationship can be complex. The Model Employee Handbook is designed to provide a road map for navigating these issues. Use the handbook as a tool to help your municipality develop, implement and update municipal employment policies. The handbook will be mailed to each city and posted on the MASC Web site once the publication is finalized.

Learn more about municipal employment policies during the Annual Meeting session, "Will Your Personnel Handbook Stand Up in Court?"

Other Annual Meeting topics

Building Bridges/Building Messages

The Mindset of an Innovative Leader

Preparing a Budget from Scratch

Don't Let Your Meetings Get Out of Order

Workers' Compensation — Why Costs Continue to Rise

Are Your Employees Healthy and Fit?

Growing by Choice or Chance

Find Me the Money

Are You Hiring the Best Law Enforcement Employees?

Don't Let a Crisis Turn Into a Communications Nightmare

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the U.S. Supreme Court. Pending Supreme Court action, municipalities around the country are not receiving franchise fee payments on broadband services [see *Brand X Internet Services v. FCC.*, 345 F.3d 1120, (9th Cir.)].

Are cable operators paying all the franchise fees owed to cities?

Over the past several years, cable franchises have been transferred numerous times. Many cities throughout the country have had as many as three different cable operators during

the last six years. During these transfers, hundreds of franchises trade hands. The new cable operator then attempts to comply with numerous new obligations, including the proper payment of franchise fees to each community served. It is not uncommon, however, for cable operators to handle franchise fee payments in a generic "one-size-fits-all" manner, regardless of the language contained within a given municipal franchise. This occurs despite the fact that each franchise typically contains a slightly different

definition of "gross revenues" on which franchise fee payments are based.

For years, cities have routinely conducted franchise fee audits of cable operators to determine whether the operator is paying the appropriate fees under the franchise. However, recent franchise fee reviews have discovered more errors than historically have been present, even from large cable operators. This is due in part to the complexity of cable operations and the

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numerous revenue sources now available to cable operators. Further, several new court decisions have changed the manner in which cable operators can collect franchise fee revenue. Following is a description of a recent 5th Circuit Court decision that affects the cable operators collecting franchise fees.

Pasadena case

In October 2001, the FCC issued an order involving the City of Pasadena, California ("Pasadena Order"), that permitted cable operators to pass through franchise fees to subscribers on cable television bills based on gross revenues that encompass "non-subscriber" revenue. Specifically, this non-subscriber revenue included income generated by advertising sales and home shopping commissions. As a result of the Pasadena Order, many cable operators around the country increased franchise fees on subscribers' bills by 0.25 percent or more.

A number of local franchising authorities (LFAs) around the country, including a group of Texas franchising authorities and the National Association of Telecommunications Officers and Advisers, petitioned the 5th Circuit for review of the Pasadena Order. On March 27, 2003, the 5th Circuit denied the LFAs' petition for review on the grounds that the FCC had acted within its broad discretion and not in a manner that was arbitrary, impulsive or manifestly contrary to the statute in question [see *Texas Coalition of Cities for Utility Issues v. FCC*, 324 F.3d 802 (5th Cir. March 27, 2003)].

The practical result for franchising authorities across the country is that cable operators can pass through, as a separate line item on subscribers' bills, all franchise fees due and owed the franchising authority. These franchise fees may include non-subscriber

revenues, including home shopping and advertising revenues. In other words, cable operators will be permitted to reap the benefits of growth in non-subscription revenue, while subscribers must bear the financial burden of increased franchise fees.

For example, if a cable operator sells \$100 worth of advertising to a local business to provide commercial spots on the cable system, many franchises require the cable operator to pay a 5 percent franchise fee on this revenue. Prior to the Pasadena Order in 2001, cable operators paid the applicable \$5 franchise fee on the \$100 of revenue and/or assessed the \$5 fee to the advertiser. Under the Pasadena Order, this \$5 franchise fee is now spread over all subscribers in that jurisdiction, resulting in a minimum 0.25 percent increase per month in the total franchise fee paid by a subscriber. In essence, the more advertising that is bought, the higher the franchise fee.

The 5th Circuit decision has not resulted in any reduction in franchise fee payments to LFAs, although subscribers must now bear the burden of additional franchise fee payments, even as cable operators increase non-subscription revenue. If a city chooses to conduct a franchise fee audit, staff should pay particular attention to the franchise language, which may include mandatory reimbursement of any audit fees incurred by the city should the city discover an underpayment of franchise fees.

Find out more about this topic at the Annual Meeting session, "Can Municipalities Regulate and Tax Telecommunications Systems?"

A sample review of a community's franchise fee payments will be provided and discussed. Grogan provides legal services for MASC's Cable Franchise Advisory Program.

Cable Franchise — A contract between a town, city or county and a cable operator that permits the cable operator to use the rights of way to construct and operate a cable system.

Franchise Fee — A fee paid by a cable operator under a cable franchise as payment for the right to operate a cable system in the rights of way.

Broadband — A delivery system capable of carrying a wide range of communications frequencies (example: voice, video and data service provided over a single wire into a house).

Interstate Information Services — A federally defined term that is used to refer to communication services other than telephone and cable television services (example: high-speed Internet access via a cable modem).

Cable Operator — A company authorized by a cable franchise to operate a cable system and provide cable service in a community.

Advertising Revenue — Revenue derived by a cable operator from a company seeking to place ads on the local cable system. This revenue may be subject to a franchise fee payable to the city or town.

Gross Revenue — A key term defined in a cable franchise that dictates the revenue on which franchise fees are paid. Often defined to include all revenue sources of a cable operator.

Local Franchising Authority — A city, town or county that grants a cable franchise to a cable operator.

For more information about the program, contact Michelle James, MASC's director of Education and Training, at 803.933.1228 or e-mail mjames@masc.sc.

Six graduate from Clerks and Treasurers Institute

In May, six people graduated from the Municipal Clerks and Treasurers Institute (MCTI), a three-year program designed to provide municipal clerks and treasurers with the skills critical to their profession.

To receive their certificates, participants attended more than 100 class hours in such topics as the role of the municipal clerk, financial management, overview of government, public administration and conducting meetings.

During the spring Institute, Vivian Case of Ridgeway received a three-year scholarship to attend MCTI. Case hopes to update her skills and learn new procedures for handling town hall daily operations to ensure her job is performed correctly and efficiently. The Town of Ridgeway will receive \$200 per session for Case to complete the Institute. The scholarship is sponsored by MFOCTA and underwritten by SCANA/SCE&G.

Completion of MCTI satisfies the education requirements for certification from the International Institute of Municipal Clerks and the Association of Public Treasurers of the United States

MCTI graduates Sylvia Young of Chester, Ann Mercer of Georgetown, Teresa Meeks of Lancaster, Mahala Cochran of Williamston, Frances Richardson of Westminster and Patricia Graham of Kingstree.



Thomas Chandler, president of the Municipal Finance Officers, Clerks and Treasurers Association, presents Vivian Case of Ridgeway with the MCTI scholarship.

and Canada. MCTI is co-sponsored by MASC, the SC Municipal Finance Officers, Clerks and Treasurers Association (MFOCTA) and the Center for Governmental Services at the University of South Carolina's

Institute of Public Services and Policy Research.

The next MCTI session will be held September 15-17 at the Adam's Mark Hotel in Columbia.

Business licensing training program graduates fourteen

Fourteen individuals graduated from the SC Business Licensing Officials Association (BLOA) Training Program. The three-year program is designed to improve the professional and administrative skills of participating licensing officials through a series of educational sessions.

Completing the program is one of the requirements for attaining the Accredited in Business Licensing (ABL) designation. Successful candidates must also pass a comprehensive examination.

BLOA, an affiliate of the Municipal Association of South Carolina, helps members remedy the problems associated with administering and enforcing the local business and professional license tax. BLOA addresses these issues through its training sessions, listserv and newsletter.



The 2004 BLOA Training Program graduates are (listed in alphabetical order): Linda Barr of Lake City, Debra Chisholm of Greenville, Robin Davis of Beaufort, Melissa Denny of Cayce, Shawn Greenwood of Summerville, Belinda Harper of Seneca, Garrett Huddle of Cayce, Lex Kirkland of Aiken, Kenneth Knudsen of Cayce, Donna Langley of Lancaster, Frankie O'Harrow of Myrtle Beach, James Siemers of Charleston County, Phyllis Small of Abbeville and Vikki Woods of Estill.

The walkable hometown

Change is a constant. Our communities are always in the midst of change. Sometimes, these changes are obvious — the building of a new road or subdivision or shopping center.

Sometimes, change occurs over time, and it is more difficult to recognize. All of a sudden, we look around and realize that something is different, but we have difficulty putting our finger on what the change is or its cause.

“The slow disappearance of the walkable nature of our hometowns is one such change,” said Bill Steiner, director of Community Builders.

“It has been happening for over three generations. And it has been relatively slow. Now, ‘all of a sudden,’ we are discovering that it is difficult, maybe even impossible to walk our towns.”

Should we care? Absolutely, and for a variety of reasons. A major concern is pedestrians being killed by motorists at an alarming rate because we have not planned for the pedestrian. A high percentage of these deaths are children.

Health is another important reason to be concerned about our inability to walk our hometowns as we learn that we are not getting the exercise we once did. While reduced exercise is attributable to several causes, one is that it is difficult to get about on foot. Lack of exercise is becoming particularly prevalent among our youth. Then there are those who, for reasons of income or age, do not have cars. Their ability to take advantage of jobs, recreation, shopping and the other amenities is compromised when non-drivers cannot walk to their destinations.

Being unable to walk our towns detracts from a sense of community. A sense of community is created by human interaction. To build community, the interaction has to take place in the public realm. Downtowns and neighborhood streets are the infrastructure on which this exchange takes place. If this exchange is diminished or rarely taking place, you do not have a community. You have a group of people living in proximity to one another.

We lose a vital element of our town's character if we cannot walk it.

Community Builders will conduct a pre-conference workshop, “Walkable Hometowns,” during MASC's Annual Meeting. The session has two goals. One is to help participants understand the importance of walkability, and the second is to show how to get there. At first blush, one might think that installing sidewalks is all that is needed. In fact, it is much more complicated than this. Sidewalks have to lead someplace, they have to have certain physical characteristics, and they cannot be cut up with barriers that come in many forms.

One of city government's many roles is to help build a sense of community. When people feel a tie to their place, they commit themselves to its improvement. Making your community walkable is one way in which you build the ties that lead to this commitment.

Independent insurance agents versus business licenses

Q. Some independent insurance agents take the position that they should not be subject to a business license tax on their commissions because the insurance companies for which they sell policies have already paid business license taxes based on the premiums on which the commissions are based. Are independent insurance agents subject to a business license tax? Is this “double taxation,” as some of the agents contend?

A. Independent insurance agents (but not insurance company employees who receive W-2s) are subject to the business license tax. They are independent contractors.

There is no “double taxation” because insurance companies and independent insurance agents are two different and separate business activities. The October 4, 1979 *Opinion of the State Attorney General* (1979 SC AG LEXIS 157) supports this position.

Q. Some insurance agents and real estate agents are required to “split” commissions with other agents. Some non-employee agents who obtain their own individual business licenses are required to pay a percentage of their commissions to their agencies for administrative charges such as overhead and advertising. Are the commissions split with others

and the administrative charges includable in the agent's gross income subject to a business license tax?

A. Your business license ordinance should define “gross income.” For example, MASC's *Model Business License Ordinance* (April 2003), in Section 2, specifically describes gross income for brokers or agents as meaning “gross commissions received or retained, unless otherwise specified.”

Commissions required by agreement to be “split” with other agents are not retained by the receiving agent. Under the model ordinance,

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News Briefs



■ MASC welcomes Anne Shissias to its staff as health and wellness manager for Risk Management Services, a new position to MASC. She will assist RMS members in developing and implementing wellness programs and oversee RMS' new disease management program. The objective is to improve employees' quality of life and help reduce medical costs. Shissias previously worked for Carolina Care Plan as quality resources manager.

■ Frances Quarles, CMC, municipal clerk-treasurer of the Town of Johnston, was accepted to the International Institute of Municipal Clerks' (IIMC) Master Municipal Clerk Academy Program. The academy is a professional body of municipal clerks who have continued their educational achievement beyond the attainment of the Certified Municipal Clerk Award. From 10,300 active IIMC members, only 1,754 municipal clerks have attained this goal.

■ Mayor Wayne George of Mullins was recently presented with the Rural Innovator Award by Governor Mark Sanford during the Governor's Rural Summit.



Classifieds

■ The City of Chester is seeking applicants for the position of police chief. Submit application or resumé to City of Chester, Attn: Personnel Department, 100 West End Street, Chester, SC 29706 or e-mail croof@infoave.net.

■ The City of Hardeeville is seeking candidates for the position of recreation director. Submit resumé and cover letter to City Administrator, 36 East Main Street, PO Box 609, Hardeeville, SC 29927 or e-mail rshaynes@cityofhardeeville.com.

Focus on Technology

'Whois' the owner of your Web address?

The general public has come to expect its municipality to have a Web presence. Citizens can go to the Web and get an array of information when it is convenient. Many municipalities provide resources to its citizens via the Web, such as councilmember contact information and council meeting agendas and minutes; some even offer online bill paying.

If your city has a Web site, a "domain name" is its address on the Internet. For example, MASC's domain name is "www.masc.sc."

Domain names (or Web addresses) must be purchased, but just buying the domain name does not guarantee it is yours forever. You are actually leasing the address for a specific period of time. If you don't renew the registration or fail to pay, the domain name may be sold without your knowledge. If a citizen then types in your Web address (which happens to be printed on all

your stationery, brochures and police cars), they might be shocked by what they find.

Registering and maintaining a domain name is a serious issue local governments cannot afford to ignore. There are Web sites (e.g., www.redhotdomainnames.com) devoted to listing expired domain names for others to purchase. In fact, the list is delivered via e-mail to subscribers each day.

To ensure your Web address is not sold, contact your Internet service provider vendor and ask for the status of your domain name registration. Ask for the "whois" information regarding your domain name. "Whois" is similar to a motor vehicle registration certificate indicating proof of ownership, in that it shows the domain name's true owner and the registry's expiration date.

Protect your domain name. Follow up periodically to ensure you are listed as the true owner of your Web address.



Twenty-one municipal linemen competed in the annual Pole Climbing and Hurtman Rescue Training Competition sponsored by the SC Association of Municipal Power Systems at Pine Island, May 5-6. Winners of the competition were Chris Summers of Orangeburg Department of Public Safety and T.J. Hopper of Union. Runners-up were Jackie Helms of Rock Hill and Richard Christopher of Orangeburg Department of Public Safety.

Achievement Awards program recognizes local government excellence

Each year, MASC honors outstanding local government projects in South Carolina. In 2003, 17 municipalities entered the Municipal Achievement Awards program. The seven winners — Trenton, Bluffton, Cheraw, Greer, Orangeburg, Lexington and Cayce/West Columbia — were featured in previous issues of *Uptown*. Following is a description of other 2003 entries.

City of Newberry

By renovating the Newberry Opera House into a first-class performing arts center, the City hoped to spur economic development in the downtown area. With a steady stream of patrons to the opera house, the private sector began re-investing in and developing a diverse retail and hospitality base. Coupled with significant streetscape and public space improvements, 20 buildings have been substantially renovated, and six restaurants and a hotel have been added. In an effort to maintain this momentum, Newberry City Council began collaborating with public and private organizations to form a multi-agency advertising consortium with the sole objective of encouraging more people to visit Newberry. Using direct mail, billboards, magazines, newspapers, radio and television, the campaign focuses on the performing arts culture, the many fine restaurants and shops and on a uniquely designed hotel. Now visitors travel to the city not only for a night of entertainment, but also for a night or two to enjoy everything Newberry has to offer.

Contact: Jeff Shacker, 803.321.1000

Town of Patrick

Matching a community need with a preservation need gave the

Join us July 17 during the Annual Meeting for the Awards Breakfast as 2004 Municipal Achievement Award winners will be announced and highlighted in a multimedia presentation.

Town of Patrick just the right mix to renovate its 100-year-old train depot and create a community/senior center. The Pee Dee Regional Council of Governments helped the Town acquire a \$30,000 Community Development Block Grant for the project. While architects worked to preserve the historical qualities of the building, the Chesterfield County Council on Aging helped ensure the building would be accessible to seniors. The depot renovations included stabilizing the exterior, painting, adding heat and air conditioning, adding restrooms and providing handicap access. The Patrick Train Depot has been accepted as a National Register site and is frequently used by senior citizens for recreational and social functions. The Chesterfield County Arts Alliance has also used the preserved building for art exhibits.

Contact: Rosa Millsaps Privette, 843.498.6994

City of Sumter

The Harvesting Opportunities to Promote Empowerment (H.O.P.E.) Center concept was developed after a series of public meetings was held in various low- to moderate-income neighborhoods throughout the city. Residents discussed their needs and ideas of how to improve the quality of life in their communities. Community involvement was a key aspect of the project, from conception through design to

programming. Through its three H.O.P.E. Centers, Sumter has provided afterschool programs in which youth are assisted with homework and engaged in recreational activities. Other programs provided include adult education classes, health and nutrition services and business/entrepreneurial programs. Each H.O.P.E. Center costs an average of \$1 million to construct and furnish, in addition to an initial operational budget of \$100,000. Sumter used grants available to it from being a nationally designated Empowerment Zone. Empowerment Zones are administered by the U.S. Department of Housing and Urban Development and designed to provide grant assistance to municipalities trying to develop innovative approaches to improving the quality of life for low- to moderate-income areas.

Contact: Talmadge Tobias, 803.436.2577

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commissions that are not retained are not included in gross income.

However, the types of administrative charges described are merely a cost of doing business or an item of business overhead to the agent. The model ordinance's definition of gross income does not allow for deductions from gross income for overhead.

To receive a copy of the Model Business License Ordinance, go to MASC's Web site at www.masc.sc and click on "Research/Resources," then "Model Ordinances/Resolutions," or contact Michelle Willm at 803.933.1259 or e-mail mwillm@masc.sc.



Educational Opportunities

SC Association of Municipal Power Systems

■ **June 6-9**, will hold its Annual Meeting at the Kingston Plantation in Myrtle Beach. Topics include broadband Internet connection through power lines, FEMA reimbursements, meter tampering and personnel management.

SC Association of Stormwater Managers

■ **June 18**, will hold its Quarterly Meeting at the State Museum in Columbia. Topics include urban landscaping, multimedia in public outreach and an MS4 Permit Appeal update.

Municipal Association of SC

■ **July 15-18**, will hold its Annual Meeting at the Marriott Beach and Golf Resort in Hilton Head Island. See related story on page 1.

SC Association of Stormwater Managers

■ **August 20**, will hold its Quarterly Meeting at the State Museum in Columbia.

Municipal Clerks and Treasurers Institute

■ **September 15-17**, will hold its Fall Session at the Adam's Mark Hotel in Columbia.

Municipal Elected Officials Institute of Government

■ **September 30**, will present "The Forms of Municipal Government" and "Benefits and Pitfalls of Economic Development."

SC Municipal Personnel Association

■ **November 10-12**, will hold its Annual Meeting at the Holiday Inn Oceanfront in Hilton Head Island.

SC Municipal Insurance and Risk Financing Fund

■ **November 18**, will hold its Annual Members Meeting.

SC Municipal Insurance Trust

■ **November 18**, will hold its Annual Members Meeting.

SC Association of Stormwater Managers

■ **November 19**, will hold its Quarterly Meeting at the State Museum in Columbia.

For more information about these meetings or other MASC meetings not listed, please call 803.799.9574, or visit our Web site at www.masc.sc.



1411 Gervais Street ■ P.O. Box 12109
Columbia, South Carolina 29211
Tel: 803.799.9574 ■ Fax: 803.933.1299
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