

UPTOWN

To tattoo or not tattoo: That is the question

Act 250 of the General Assembly, effective June 17, 2004, legalizes tattoo facilities that satisfy DHEC licensing requirements. Previously, the tattooing of another person (except by a physician when medically necessary) was a crime in South Carolina. With the legalization of state-licensed tattooing and the unusual wording of Act 250, municipalities will now be faced with decisions of whether or to what extent tattooing activity will be allowed in their jurisdictions.

The Act sets comprehensive provisions on tattooing health practices and requires further regulations on health and safety from DHEC. For this reason, it appears that the Act prevents the need for further local regulation

of health and safety standards specific to tattoo businesses. However, the wording of the Act concerning licensing requirements appears to imply that local governments are authorized to allow or prevent tattooing activity within their jurisdictions. Because the full legal effects of the Act on municipal powers are not free from doubt, municipalities should consult with their municipal attorneys on the Act's implications for the establishment or location of tattoo businesses within their municipalities.

Under the Act, DHEC must first establish regulations setting health and safety standards for such businesses. At this time, DHEC is drafting regulations. The General Assembly must

review these regulations when its members return in January. To obtain a license, the Act requires the license applicant to receive and agree to DHEC regulations. DHEC cannot begin issuing licenses until the General Assembly has approved the regulations.

The Act first defines "tattooing," a "tattoo artist" and a "tattoo facility." It requires DHEC to establish, by regulation, sterilization, sanitation and safety standards for individuals engaged in the tattooing business. The Act specifies in detail certain required infection control measures by tattoo artists and facilities and certain training certifications required of tattoo artists. The Act also states that a tattoo facility may only

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All magistrates and municipal judges required to take Oath by January 1, 2005

By Order dated October 22, 2003, the SC Supreme Court required that all magistrates and municipal judges be administered a newly adopted Oath of Office for Judges. The Order requires that an hour-long tutorial precede the administration of the Oath. All magistrates and municipal judges must take the mandatory tutorial and Oath by the end of 2004.

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provide tattooing and may not engage in any other retail business, including the sale of goods or performing any form of body piercing other than tattooing.

Tattoo facilities are required to obtain a license from DHEC prior to performing tattooing procedures. To obtain a license, new SC Code section 44-34-20 (B)(5) requires that a tattoo facility must provide to DHEC, among other things, “a certified copy of an ordinance passed by the local governing body where the business will be located which authorizes the tattooing of persons within its jurisdiction.”

This language strongly implies that the state legislature intended to grant to municipalities the authority to allow or not allow tattooing within the municipality. If the legislature intended to allow licensed tattooing statewide or to pre-empt local government authority in this area, the requirement for proof of a local government ordinance allowing tattooing facilities would not be necessary. This unusual choice of language by the legislature strongly indicates that a municipality is not required by this state law to allow tattooing facilities in the municipality and can exclude their establishment within the municipality simply by taking **no** legislative action to specifically authorize such facilities.

However, municipalities considering this approach should also carefully review their current zoning ordinances. Because tattooing was unlawful in South Carolina until Act 250, many zoning ordinances may not have prohibited or limited the possible locations of tattooing businesses. Current zoning ordinances, for example, may permit or allow tattooing as a “personal services” business, as a “home occupation,” as a retail trade or business, or under some other zoning provision.

The Act, in new section 44-34-110(A)1, prohibits DHEC from issuing an initial facility license if the place of business is within 1,000 feet of a church, school or playground. These limitations on location necessarily indicate the state legislature’s perception of some negative effects of tattooing locations.

Municipalities may wish to consider placing additional location restrictions on tattoo facilities within their zoning ordinance. This could be done, for example, by expressly adding to the state’s distance prohibitions other specific structures or uses such as parks, recreational areas, public property, day care facilities, businesses selling alcohol, beer or wine, residences or residential districts, body piercing facilities or other tattoo facilities.

“Our courts have upheld the legality of similar additional location restrictions by local governments when the additional restrictions were determined not to conflict with state regulation,” said Danny Crowe, general counsel for MASC. In *McKeown v. Charleston County Board of Zoning Appeals*, the court upheld a zoning ordinance prohibiting establishments serving beer or alcohol from locating within 500 feet of residential areas. [*McKeown v. Charleston County Board of Zoning Appeals* 347 S.C. 203, 553 S.E.2d 484 (Ct. App, 2001)]

Municipalities may also wish to consider whether tattoo facilities should be prohibited in particular zoning districts or, for example, near certain major streets. Some municipalities may wish to designate only certain zoning districts in which the tattoo facilities may be allowed.

However, the Act’s health focus creates some uncertainty as to a municipality’s authority to “zone out” or severely restrict by zoning the

location of tattooing businesses. Zoning powers must not be exercised arbitrarily, and zoning regulations must be reasonable. By allowing the licensing of appropriately “healthy” tattoo facilities, the Act (with its mandated forthcoming regulations) essentially removes public health and safety as the basis for local exercise of zoning and police powers. Because only “healthy” tattoo facilities can be licensed, public health concerns and public safety concerns related to health, under this view, are not affected by licensed facilities.

To justify zoning regulations that treat tattoo business locations differently from other “personal services” or retail businesses, municipalities will need to rely on a reasonable basis for such action other than public health and safety concerns. It may be necessary for municipalities, in anticipation of challenges on restrictive zoning, to establish a record showing negative primary and secondary effects of tattooing businesses.

If there is a challenge to local government regulation, tattooing businesses, at least at present, will not be able to claim infringement of their constitutional rights of free speech. In its 2002 decision in *State v. Ronald White*, the state Supreme Court held that the act or process of tattooing (as opposed to the wearing of tattoos) was not “speech” or communicative conduct in the constitutional sense. [*State v. Ronald White*, 348 S.C. 532, 560 S.E.2d 420 (2002), cert. denied, 123 S.Ct. 114 (2002)]

The new era of legalized tattoo business in South Carolina presents new legal challenges for municipalities of whether to tattoo or not tattoo.

Greenville: A cool conference city and teaching ground

Community Builders is taking its annual conference back to Greenville this year after a two-year hiatus. Why back to Greenville so soon? Great restaurants, lively entertainment and a vibrant Main Street are some of the reasons why this Great American Main Street city was chosen. But the best part of the city, even with its tremendous downtown growth, is that it has maintained the charm and relaxed atmosphere of a smaller city.

This year's conference theme is "Surviving and Thriving," and Greenville is a great laboratory in which to study. The conference will take advantage of the many assets offered by this *cool* city. The city is cool because of all it offers citizens and visitors, but also because Main Street is shaded by several lush trees. The use of trees not only adds to the aesthetic quality, but also provides protection from sunlight — cooling the asphalt, buildings and concrete, making downtown a place where people want to be. With its thriving downtown, Greenville is the pre-eminent business center for the Upstate. With almost 3 million square feet of office space, downtown accounts for more than one-third of the total office space in the Greenville/Spartanburg metropolitan area.

In recent years, downtown Greenville has become a dining and entertainment destination. With more than 60 restaurants and pubs centered around Main Street,

Community Builders Conference

"Surviving and Thriving"
Hyatt Regency, Greenville, SC
November 4-6, 2004

Greenville's downtown offers the greatest concentration of dining options in the entire Upstate area. Visitors to downtown can enjoy, in addition to great dining, a year-round series of special events suited to the season and appealing to almost every taste. From April through September, weekly concerts ranging from folk to jazz entertain visitors three nights a week, while larger downtown celebrations mark the coming of each new season. With almost 200 event days a year, Greenville leads the region in hosting visitors. Communities wanting to emulate this busy downtown can learn many lessons from the city's savvy business mix and concentration of special events.

The downtown embraces Reedy River, West End Market, Bi-Lo Center, Peace Center, numerous historic districts, theaters, performing arts venues, museums, tours and a zoo. All these attractions and sites complement the many sights, sounds and aromas on Main Street. Downtown Greenville touts itself as the epicenter for the Upstate South, with live entertainment ranging from ballet and symphony performances to hockey and indoor football games.

Local theater companies provide intimate settings for performances, while the Peace Center for the Performing Arts hosts major productions on three performance stages, including an outdoor amphitheater. You can rock 'n' roll and you can shop and stroll; you can eat, drink and be merry, or you can sit in a quiet corner and enjoy a cup of coffee while reading your favorite book.

As conferees converge on Main Street in Greenville November 4-6 to celebrate the revitalization and cultural heritage of South Carolina's communities, they will take in the history of one of our state's most successful revitalization efforts. The vision of local government and private entrepreneurs has created an environment rich in economic opportunity. This year's conference, hosted by Community Builders and The Humanities Council^{SC}, will offer a "Downtown Dining Adventure" featuring three downtown restaurants, each an entrepreneurial success in its own right.

The conference will feature take-home tools to help community leaders revitalize their towns, recruit businesses, access funding options, and recognize and develop cultural heritage. For more information on these and additional educational sessions available at this year's conference, visit the Community Builders Web site (www.sccommunitybuilders.org) or contact Beppie LeGrand at 803.933.1231 or blegrand@masc.sc.

Oath continued from cover

Magistrates and judges have the opportunity to take the required course and Oath at the Magistrate's Mandatory School on November 19, 2004. Any magistrates who have been excused from the Mandatory School should still plan to take

advantage of this opportunity. The court administration is in the process of scheduling an additional opportunity to comply with the Order before the end of the year. MASC will post this information on its Web site and listserve

once court administration has determined a date.

*For more information, contact
Clemson University Municipal Court
Judge Debi Culler at 864.656.5258 or
Oconee County Chief Magistrate Becky
Guerrard at 864.888.1460.*

Alternative federal funding opportunities for local governments: Directed federal appropriations

by Ted Kinghorn, Chairman, Kinghorn, Hilbert & Associates

There has been an increase in local governments of all sizes pursuing directed congressional appropriations to fund all types of special projects. Perhaps this phenomenon reflects a recent trend in the fiscal environment of decreased federal aid for local governments, which affects the ability of local governments to effectively meet the needs of their communities. William H. Woodwell writes in his article, "Is the Federal-State-Local Partnership Being Dismantled," "With 46 states facing combined deficits of more than \$100 billion and the federal budget being more than \$500 billion in the red, local governments are already experiencing reduction in state and federal support for key initiatives, and they fear that the worst is still to come." Now, more than ever, it is important for local governments to seek new and different access to federal funds.

Federal funding can be allocated in the form of an earmark, a specific designation by Congress that an appropriation be used to fund a particular project. Estimates show that of more than \$500 million in congressional earmarks allocated for South Carolina organizations for fiscal year 2004, a mere 2 percent went to municipal governments for projects other than transportation or infrastructure improvements. Some examples of projects funded in South Carolina municipalities through earmarks include:

- \$850,000 for an Upstate police department
- \$1.1 million for an expo center
- \$1 million for a Midlands town re-development initiative
- \$300,000 for restoration of an historic birth site

Congress passes 13 federal appropriations bills each year:

- Agriculture, Rural Development, Food and Drug Administration and related agencies
- Commerce, Justice, State, Judiciary and related agencies
- Defense
- District of Columbia
- Energy and Water Development
- Foreign Operations, Export Financing and related programs
- Homeland Security
- Interior and related agencies
- Labor, Health and Human Services, Education and related agencies
- Legislative
- Military Construction
- Transportation, Treasury and independent agencies
- Veterans Administration, Department of Housing and Urban Development and independent agencies

- \$200,000 for restoration of an old high school
- \$1.5 million to a municipal airport
- \$200,000 for re-development of a beachfront community in the Lowcountry

The best way for South Carolina municipalities to access appropriated funds is to match needs with the corresponding mission of the federal agencies covered by the 13 appropriations bills Congress passes each year (see box).

Upon final passage of the president's budget resolution, Congress drafts and marks up appropriations bills to include earmarks for projects congressional members wish to fund. Initially, a separate version of each appropriations bill is marked up and passed within the House and Senate appropriations subcommittees. The bills are then passed by full appropriations committees and finally by the House and Senate as a whole. After the bills have passed their respective houses of Congress, House and Senate representatives go to conference to hammer out the differences between the bills. Once Congress passes the final bill, it is sent to the president for his signature.

In the past two decades, there has been a consistent increase in the number of earmarks within federal appropriations bills. In one subcommittee alone, there was an increase from 496 earmarks in 1985 to 2,137 earmarks in 1999. Such an increase is indicative of the vast growth and opportunity of directed appropriations.

More and more organizations have turned to the federal appropriations process to earmark or line item needed funding for projects and initiatives; however, municipal officials are just now beginning to recognize this opportunity. As federal aid to local governments continues to wane and as municipal revenue sources get tighter, the environment is prime for pursuing new avenues for securing funds.

Kinghorn, Hilbert & Associates LLC is recognized as an expert in advocacy and appropriations projects in Washington, DC and presented a session on this topic at MASC's 2004 Annual Meeting. For more information on Kinghorn, Hilbert & Associates, visit www.khaconsultants.com.

Council meeting decorum

by Roy Bates, MASC Corporate Counsel

The author of "Robert's Rules of Order" said if there were no rules to guide an assembly, and if a person could talk on any subject as long and as many times as he pleased, and if all could talk at the same time, it would be impossible in most cases to ascertain their deliberate judgment on a matter.

SC Code § 5-7-250 (b) requires rules of procedure for council meetings, with the presiding officer having the duty to preserve order by enforcing the rules. Public interest and common courtesy require members of a public body to follow the rules with decorum.

The following reminders for appropriate conduct are based on "Robert's Rules" and suggested local rules adopted by ordinance.

- Be on time for meetings and hearings.
- Never speak without being recognized by the chair. No member has a right to speak without being recognized unless the rules permit it for certain matters such as seconding a motion, making a point of order or appealing a ruling of the chair.
- Do not engage in private conversation with another member during a meeting. This is a common practice that is disruptive and out of order.
- Do not engage in an argument with a speaker. Remarks should never be directed to a speaker.
- Direct all remarks to the presiding officer. Questions should be posed to the presiding officer, not to another member or someone in the audience.
- Refrain from making comical or caustic remarks. The presiding officer should rule them out of order.
- Never make personal remarks about another individual. An attack of a person or the speaker's motives are out of order under any rules of procedure.
- Resolve private disputes in private. Debate on a private dispute is never in order at a public meeting.
- Do not ask irrelevant questions. The presiding officer should rule them out of order.
- Do not interrupt a speaker without a proper reason under the rules of procedure. A speaker may be interrupted only for certain matters, such as a point of order, point of information, appeal from a ruling of the chair or motion to reconsider.
- Make motions clearly, without comment or explanation. Comments on motions may be made only during the discussion period.
- Keep discussion relevant to the issue. Discussion may be held only when a motion is pending.
- Comments not related to a motion before the council are out of order.
- Do not try to speak on a matter that has been ruled out of order.
- Avoid lengthy comments. State your position quickly and clearly.
- Honor time limits. "Robert's Rules" limits a speaker to 10 minutes. Local rules may provide a different time.
- Political comments are never in order. Run for re-election on your own time.
- Vote without comment. Discussion is ended before the vote is taken.
- Vote on every issue unless disqualified by law for conflict of interest or required to refrain from voting by state law. (A recusal form is available on MASC's Web site.)
- Abide by the rulings of the chair and the vote of the body. Rulings of the chair are subject to appeal. The vote of the body should be honored and supported until overturned by vote on a subsequent motion.
- Do not disrupt the meeting. Neither a member of council nor a member of the public has a right to disrupt a meeting by acting contrary to the rules. Disruption of a meeting could be prosecuted as an offense under a local disorderly conduct ordinance.
- Be courteous.
- Be fair.
- Conduct public business with decorum.

Rules of order work only if they are enforced uniformly. If the presiding officer fails to enforce them, it is appropriate to raise a point of order and have the matter resolved either by the chair or the council by majority vote on appeal from a ruling by the chair.

Each member of council has the responsibility to be familiar with and follow the rules of procedure adopted by ordinance.

For assistance in conducting and participating in council meetings, the publication "How to Conduct Effective Meetings" is available on the MASC Web site (www.masc.sc/resources/publications.htm). To purchase a copy of the publication or to borrow the videotape "How to Conduct Effective Meetings," contact Sophia Johnson at 803.933.1236 or sjohnson@masc.sc.

Local hospitality tax: Is your municipality spending it legally?

Across the state, more and more municipalities are enacting a local hospitality tax as a way to diversify their revenue sources to fund municipal projects; however, there are state regulations dictating how the municipality can use the proceeds.

Article 7, Title 6 of the South Carolina Code of Laws authorizes local governments to enact, by ordinance, a local hospitality tax of no more than 2 percent on the sale of prepared food and beverages. A positive majority of the council must enact the ordinance. Revenue and interest generated by the tax must be kept in a fund separate from the general fund.

It is crucial for municipalities to understand the state regulations regarding hospitality tax expenditures before passing the ordinance. "The law is specific as to how the money must be used for tourism-related projects," said Howard Duvall, MASC executive director. "We have to be careful when we adopt these taxes that the money is spent in accordance with state law."

Section 6-1-730 states that the **revenue generated by the hospitality tax must be used exclusively for tourism-related projects**. Proceeds from the tax can be used for construction of "tourism-related buildings; tourism-related cultural, recreational or historic facilities; beach access or re-nourishment; highways, roads, streets, and bridges providing access to tourist destinations; advertisements and promotions related to tourism development; or water and sewer infrastructure to serve tourism-related demand."

There are provisions for using revenue to operate and maintain tourism-related facilities. Cities within a county where at least \$900,000 in state accommodations tax is collected

Article 7. Local Hospitality Tax

Local hospitality tax is a tax on the sales of prepared meals and beverages sold in all establishments or can be imposed on just the establishments licensed for on-premises consumption of alcoholic beverages, beer or wine.

Section 6-1-730

(A) The revenue generated by the hospitality tax must be used exclusively for the following purposes:

- (1) tourism-related buildings including, but not limited to, civic centers, coliseums, and aquariums;
- (2) tourism-related cultural, recreational, or historic facilities;
- (3) beach access and re-nourishment;
- (4) highways, roads, streets, and bridges providing access to tourist destinations;
- (5) advertisements and promotions related to tourism development; or
- (6) water and sewer infrastructure to serve tourism-related demand.

annually (a tax imposed by the state and credited to the municipality or county in which it is collected) can use local revenues for the operation and maintenance of the items approved by the statute.

The City of Beaufort is within a county that annually collects at least \$900,000 in state accommodations tax. Beaufort uses the hospitality tax revenue for operational and maintenance costs such as cutting the grass and maintaining the entrance to Waterfront Park. The City of Lancaster, however, is not in a county collecting \$900,000 in state accommodations tax and can only use the revenue to build or advertise tourism-related facilities. The City has used its hospitality tax revenue for a

streetscape project in its downtown historical district. It also plans to use the money for advertisements and brochures to attract visitors to the city.

Before passing a hospitality tax, municipalities need to have an idea of what they want to use the money for and determine whether hospitality tax proceeds can be used for that particular project.

"Because the statute does not define 'tourism,' municipal governments enacting the tax need to ensure they are using the proceeds for projects that attract participants who are truly 'tourists' to the area," said Gary Cannon, MASC intergovernmental relations director.

Although the Tourism Expenditure Review Committee (TERC) was formed to monitor usage of state accommodations taxes, the Committee feels it should have its authority expanded to oversee local hospitality taxes, too. "If cities go outside the parameters of the law, state legislators may alter the statute to have the Committee oversee the local hospitality tax," said Duvall. "It would only take a few examples of cities using the revenue incorrectly for the state to put local hospitality taxes under the TERC. Then municipalities would have to answer to the Committee and prove each hospitality tax expenditure."

Pushing the limits could also cause other ramifications, such as legislation placing tougher restrictions on how the money could be spent or legislation strictly defining a "tourist."

If your municipal government is uncertain whether a project can be funded with hospitality tax revenue, contact Gary Cannon at 803.933.1203 or gcannon@masc.sc, or Howard Duvall at 803.933.1202 or hduvall@masc.sc for assistance.

Focus on Technology

MASC forms new affiliate

Water from the tap, curbside garbage pickup and public safety are some of the essential services provided by cities and towns. In many cases, these services are delivered to citizens by separate municipal departments, each with their own specific expertise, certifications and standard operating procedures. Just as maintaining a city's waterline is an essential job function, so is maintaining a city's computer system or network.

Technology has become a fundamental, basic infrastructure of an efficient city or town. Without it, water is harder to supply and, consequently, more expensive; garbage pickup is repeatedly late instead of punctual, and police officers patrol neighborhoods less and spend more time in the office completing paperwork.

To promote the effective use of information technology by municipalities, MASC and several municipal IT professionals formed the SC Municipal

Technology Association (MTASC). This new affiliate will provide education and training on how to provide better services and achieve greater efficiencies using the latest technological innovations for municipal government.

MTASC will hold its first training session Tuesday, November 9 from 10:00 a.m. to 3:00 p.m. in MASC's training room at 1411 Gervais Street. Presentations on Voice Over IP (VOIP) and disaster recovery begin the session, with panel discussions on Microsoft licensing, computer usage policies, e-government, purchasing hardware and software, and IT budgets.

Municipal employees or elected officials involved in operating or managing information technology are encouraged to attend the November 9 session. *For more information, visit MASC's Web site or contact Michelle James, MASC director of education and training, at 803.933.1228 or mjames@masc.sc.*

2004 MTASC Formation Committee

Lynn Griffith

Director of Information Systems
City of Georgetown

Britt Poole

Information Technology Manager
Town of Lexington

Ken Dasen

Lieutenant
Walterboro Police Department

Don Brookshire

Systems Administrator
City of Clemson

Kevin White

IT Director
City of Hartsville

Mark Cunningham

Information Services Manager
City of Anderson

SC Supreme Court reaffirms municipal authority in recent cases

In two recent significant decisions, the South Carolina Supreme Court reaffirmed municipal authority to enact ordinances under the franchise and police powers. One of these cases also illustrated the importance of a municipal council building a factual foundation, through a public hearing, to show the necessity for a police power ordinance.

In *Denene Inc. v. City of Charleston*, issued May 24, the state's highest court upheld, against constitutional challenges, the City ordinance that prohibited the on-premises consumption of beer and wine in commercial establishments between 2-6 a.m. Mondays through Saturdays. This decision followed an earlier Court decision

on the same case in December 2002. The Court held that state law did not conflict with or pre-empt such an ordinance.

In its May decision, the Court determined the ordinance was rationally based and reasonably related to furthering a legitimate municipal government purpose of protecting public health, safety and welfare. The Court emphasized that the City council, prior to enacting the ordinance, held a public hearing and heard testimony about the problems caused by intoxicated people in Charleston during those hours. This testimony, the Court concluded, established a rational basis for the council to determine the activity, unless prohibited by ordinance, would have detrimental

effects on the quality of life of residents and the city in general.

In another landmark case, the Supreme Court decided *SCE&G v. Town of Awendaw* on May 11. At issue was the Town's authority to impose, by ordinance, a franchise fee on an electric utility that served a newly annexed area. The Court, relying on both the general municipal powers statute (section 5-7-30) and Article 8, section 15 of the state constitution, held that the Town could impose, by ordinance, a reasonable franchise fee on the utility, even in the absence of a franchise agreement.

Each case contained a well-reasoned analysis of municipal legislative authority.

Changes in the Fair Labor Standards Act

by Linda Edwards of Gignilliat, Savitz & Bettis LLP

Important Note: This article is not a comprehensive analysis of the new regulation, nor is it legal advice. This article is written to highlight those areas of most interest to municipalities.

In April, the United States Department of Labor issued new regulations governing the “white collar” exemptions to the Fair Labor Standards Act. These regulations, which became effective August 23, 2004, affect those employees who are exempt from the overtime provisions of the Act. Most municipalities should not be greatly affected by these changes. If your employees were properly classified before the new regulations became effective, they most likely are still properly classified.

Executive Exemption

This exemption includes employees who are classified as supervisors. In order to be exempt under this provision, an employee must meet all of the following:

1. be paid a guaranteed salary of at least \$455 per week;
2. have as a primary duty (generally, more than 50 percent) management of a department or subdivision;
3. customarily and regularly direct the work of at least two other full-time employees or their equivalent, e.g., four part-time employees; and
4. have the authority to hire or fire other employees, or have his or her suggestions and recommendations with respect to employee status given particular weight.

These criteria contain two significant changes. The first is the increase in the salary required for an employee to be classified as exempt. The employee must receive at least

The Fair Labor Standards Act (FLSA), originally enacted in 1938 and subsequently amended, is a group of federal laws intended to provide a minimum standard of living for American workers by remedying situations of low wages and long work hours for employees involved in interstate commerce. The Act deals with a number of employer-employee issues including wage rates, hours of service, overtime, compensatory time and child labor.

\$455/week (\$23,660/year) in order to be exempt. However, this does not mean an employee who makes \$455/week is automatically exempt. The employee must meet all the previously mentioned criteria to be exempt. Remember, a supervisor’s primary duty must be supervision if he or she is to be classified as exempt. “Working” supervisors/foremen are not exempt from the overtime provisions, no matter how much they make. This type of employee is generally doing the same work as the other workers, e.g., operating equipment. He or she is the lead person but really has no say in personnel matters.

The second important change is that an exempt supervisor must have the authority to hire and fire employees or have his or her suggestions with respect to employee status be given particular weight.

Finally, the former “sole charge” exemption has been eliminated. This provision permitted municipalities to classify the most senior employee at an off-site location as exempt if the employee was in charge of the location. Generally, the sole charge exemption was used to exempt the most senior

person at a fire or police substation. These employees are no longer exempt unless, in addition to being in charge, they meet the previously mentioned criteria or the criteria of another exemption.

Administrative Exemption

The changes to this exemption are modest. An administrative exempt employee must:

1. be paid a guaranteed salary of \$455/week;
2. have as a primary duty performance of office or non-manual work directly related to management or general business operations; and
3. use independent judgment and discretion with respect to matters of significance.

A common problem in the public sector is classifying employees in administration as administrative exempt. Remember, however, employees must use independent judgment and discretion regarding significant matters. Generally, in municipalities, the only employees who meet these criteria are the purchasing director, human resources director and a department head who does not supervise enough people to be classified as an exempt supervisor. Inspectors and examiners generally do not qualify for the exemption.

Professional Exemption

The changes to this provision are the least dramatic. To be exempt as either a creative or learned professional, an employee must:

1. be paid a guaranteed salary of \$455/week; and

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2004 Achievement Award Winner

Population Category 10,001-20,000: The City of Greer

The City of Greer worked with businesses and thousands of volunteers, pooling resources, talents and money to build a community playground.

When a BMW employee shared his idea about the community working together to build a playground, the idea was embraced by the company and shared with Greer community leaders. BMW contracted with an internationally renowned architectural firm that collaborates with communities to build unique and innovative playgrounds. The City of Greer donated the land for the playground and brought together volunteers to form the Playground Core Committee.

On Design Day, playground designers asked children what they would like to see in a perfect playground. It was on that day the Ice Cream Slide, Rocket Ship, Monkey Cave, Tree House, Octopus Slide and Noah's Ark were born.

For the next 12 months, volunteers organized committees to refine the designs, raise funds, locate donations of tools and procure materials. The committee also recruited volunteers, arranged child care and coordinated meals for thousands of volunteers. It added artistic touches and organized the community volunteer workforce that would turn the blueprints into an exciting playground.

Children submitted names for the playground, and the winning name was chosen by hundreds of children voting on the names by using Popsicle sticks as ballots. The children chose to name the playground "Kids Planet."

Every person working to build Kids Planet was a volunteer. Greer Commission of Public Works dug holes for the huge support poles, and the Greer High School football team lifted the heavy wood poles into the holes. Volunteers — young and old,



LEFT: Every person working to build Kids Planet was a volunteer. Over a period of nine days, 3,000 volunteers used \$100,000 worth of supplies and built an amazing playground.

BELOW: Children enjoy playing on the tire swings and the other specially requested equipment such as the Ice Cream Slide, Rocket Ship, Monkey Cave and Tree House.



men and women, skilled and unskilled — rose to achieve the common goal of building a unique playground by sanding, painting, hammering, and spreading gravel and mulch. Almost every restaurant in town donated three meals a day for hundreds of volunteers. Over a period of nine days, 3,000 volunteers used \$100,000 worth of supplies and built not only an amazing playground, but also a unique work of art.

To fund this project, the Playground Core Committee established a non-profit status. More than \$350,000 was raised from local businesses, corporations, individuals, special fund-raisers and children bringing in pennies.

One fund-raiser enabled families to have their names embedded in pickets surrounding the playground.

Approximately six months after Kids Planet was opened, a grandfather visited with his grandchildren and noticed that a child in a wheelchair was limited in what he could do in the playground. The grandfather offered seed money to build a playground for special needs children. With this donation, in addition to a Community Development Block Grant from the Greenville County Redevelopment Authority, a committee of volunteers started working to create an additional playground for children with physical impairments.

Once again, the children were asked what they would want in the perfect playground. This time, children in wheelchairs were asked, as were physical therapists and parents of special needs children. The children in wheelchairs wanted to bounce, swing and go through tunnels while in their wheelchairs.

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2. have as a primary duty the performance of work that requires advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction.

Employees who fall under this exemption include staff attorneys and engineers.

Computer Professional

The regulations condense a number of provisions regarding this exemption into one place. To be exempt in this category, an employee must:

1. be paid a guaranteed salary of \$455/week or an hourly rate of at least \$27.63/hour; and
2. be employed as a computer systems analyst, software engineer or in a similarly skilled field with a primary duty of determining functional needs;

design, development or analysis of systems; or similar skills.

Employees who repair or maintain computer hardware are excluded from this exemption, as are employees whose work is highly dependent upon the use of computers and computer software, but who are not truly computer professionals.

Miscellaneous Provisions

For the first time, the regulations permit employers to dock the pay of exempt employees in full-day increments for inappropriate or illegal conduct such as harassment, violence or drug use. Whether the rule extends to all workplace misconduct is not clear.

Remember that the law has always contained a provision for small law enforcement and fire departments. If the department has fewer than five employees, including the chief, no employee of the department is entitled to overtime.

Other MPA Annual Meeting topics

- “Municipal Personnel Legal Bloopers”
- “Fair Labor Standards Act (FLSA) Update — What Municipalities Need to Know”
- “Family Leave Act (FMLA) and Consolidated Omnibus Budget Reconciliation Act (COBRA) Basics”

The regulations contain definitions of many of the terms previously mentioned and must be consulted in order to properly assess whether a particular position can be classified as exempt. Job titles are not determinative. Job descriptions must be carefully analyzed to determine if job duties meet the exemption criteria.

Learn more about this topic and other personnel issues at the SC Municipal Personnel Association's Annual Meeting, November 10-12 at the Holiday Inn Oceanfront Resort on Hilton Head Island.

Achievement continued from page 9

The committee engaged a company that specializes in custom-design recreational facilities that are 100 percent accessible and designed to be built by the community. The company created the blueprints, supplied manuals, oversaw the purchase of tools and supplies, and supervised the construction of Kids Planet Too. Six area construction companies donated crews to construct major elements, and 700 volunteers helped with the construction, food, child care, mulch and sand. In just five days, the playground was ready for play. An additional \$65,000 was raised primarily through corporate donations and grants to fund Kids Planet Too and

a handicap accessible restroom.

The glider swing and ramp offer access for individuals in wheelchairs to swing; the sand area offers elevated levels of play where children in wheelchairs can pull under the table to play in the sand. A tunnel is large enough for a wheelchair to go through, and there are slides with wheelchair access, horizontal swings and even a tire swing. Pavilion shelters with wheelchair access, picnic tables and connecting ramp sidewalks were also added to Kids Planet Too.

One person's idea led to a city working together, with businesses and thousands of volunteers pooling

resources, talents and money to enhance the life of the community for years to come.

For more information about this project, contact Carole Rosiak at 864.848.5387.

MASC recognizes and encourages innovations and excellence in local government through its Achievement Awards. Started in 1987, the program provides local government officials and employees the opportunity to receive deserved recognition for superior and innovative efforts in local government. The program also provides a forum for sharing the best public service ideas in South Carolina. For more information, visit MASC's Web site at www.masc.sc or call Christie Zeller at 803.933.1215.

E-government prices dropping for municipalities

How often do we experience price decreases these days? "Not often" would be the overwhelming response. This is not the case with the price of e-government modules, software that allows citizens to conduct business with Town Hall 24 hours a day, seven days a week through the Internet. As technology has developed and as acceptance and use of e-government has increased, market prices for e-government modules have come down.

The Municipal Association of South Carolina is pleased to announce significant price decreases for all e-government modules offered through its technology partner, VC3. The pricing for online utility bill payment and online property tax payment has decreased by 40 percent to 72 percent depending on the length of the contract and the size of the municipality. VC3 will continue to honor its agreement with MASC to further reduce the price to SC cities and towns as more of them utilize the service.

"We are extremely pleased MASC and VC3 have been able to work to lower the cost of e-government for our cities," said Miriam Hair, MASC deputy executive director. "As the public demands the ability to view and pay municipal bills online, it is important that the cities be able to offer these services at an affordable price."

With the ability to integrate these payment modules with most municipal financial systems, a municipality will be able to save additional costs. The personnel time to process payments can now be eliminated as the customer's keystrokes replace those of municipal personnel.



In August 2001, MASC signed a strategic alliance agreement with VC3, a Columbia, SC, technology firm, to assist in the delivery of technology programs to South Carolina's cities and towns. MASC offers technology programs through its Technology Enhanced City Hall (TECH) program. In addition to online utility and property tax payments, the TECH program now offers online payment of parking tickets and a module for receiving and responding to citizen requests online. MASC also offers assistance in assessing a city's or town's technology needs and developing a technology plan to address these needs. Design and hosting of Web sites is offered, in addition to an easy-to-use tool to add and edit Web site content. Daily management of a city's or town's computer systems is also offered.

For pricing and additional information, please call Miriam Hair at 803.933.1204 or Larry Mattox of VC3 at 803.978.2725, or visit www.vc3.com.

News Briefs



■ MASC has promoted two staff members. As MASC's information technology manager, Krystal Dailey will manage and support the day-to-day technology needs of MASC staff. As staff associate for affiliate services, Margaret Lumpkin will be the staff liaison for the Business Licensing Officials Association (BLOA) and the Municipal Finance Officers, Clerks and Treasurers Association (MFOCTA). She will also manage each group's accreditation programs: the Accreditation in Business Licensing (ABL) and the Masters in Business Licensing (MBL). Lumpkin will continue to support the SC Community Development Association (SCCDA), the SC Association of Stormwater Managers (SCASM) and the Municipal Technology Association of South Carolina (MTASC).

■ The Local Government Commission (LGC) and Penn State University will hold their fourth annual "New Partners for Smart Growth: Building Safe, Healthy and Livable Communities" conference January 27-29, 2005 in Miami Beach, FL. The event is a multidisciplinary approach to implementing smart growth principles to help build safer, healthier, more economically viable, transit-oriented and pedestrian-friendly communities across the nation. For more information, visit www.outreach.psu.edu.

■ The South Carolina Energy Office will award grants to public entities designing and installing solar water heating systems. Application deadline is December 10, 2004. For more information, visit www.energy.sc.gov or call D'Juana Wilson at the SC Energy Office at 803.737.1706.



Educational Opportunities

SC Business Licensing Officials Association

■ **October 19-21**, will hold its Annual Meeting at the Embassy Suites at Kingston Plantation in Myrtle Beach. Topics include "Leadership Methods for Maximum Performance and Productivity," "Transitioning from SICS to NAICS" and "Telecommunications and Your City's Business License Ordinance."

SC Municipal Finance Officers, Clerks and Treasurers Association

■ **October 20-22**, will hold its Annual Meeting at the Embassy Suites at Kingston Plantation in Myrtle Beach. Topics include "Leadership Methods for Maximum Performance and Productivity," "Election Law Update," "New GASB OPEB Accounting Standards" and "Dollars and Sense: Choosing a New Financial System."

Community Builders

■ **November 4-6**, will hold its Annual Conference at the Hyatt Regency in Greenville. See related article on page 3.

Municipal Technology Association of South Carolina

■ **November 9**, will hold its first training session at the MASC offices in Columbia. Topics include "Voice Over Internet Protocol," "Disaster Recovery" and panel discussions on Microsoft licensing, computer usage policies and e-government. See article on page 7.

SC Municipal Personnel Association

■ **November 10-12**, will hold its Annual Meeting at the Holiday Inn Oceanfront in Hilton Head Island. See related article on page 8.

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.

SC Community Development Association

■ **November 17**, will hold its Fall Meeting at the State Museum in Columbia. Topics include "Community Restoration," "Plan Preparation" and "The Housing Continuum."

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 Utility Billing Association

■ **November 18**, will hold its Fall Meeting at the Columbiana Hotel and Conference Center in Columbia.



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