

UPTOWN

Five mayors appointed to Counter Terrorism Councils

While the threat of terrorism is mentioned almost every day on the news, many people have the attitude that “it will never happen here.” Fortunately, South Carolina has created a Counter Terrorism Coordinating Council so that in the event South Carolina is the target of a terrorist attack, policies and procedures will be in place to respond to the incident. Serving on the council are representatives from state departments and agencies. Chief Robert Stewart of the South Carolina Law Enforcement Division (SLED) is Coordinating Council chairman.

Stemming from the Coordinating Council are five subcouncils consisting

of one statewide and four district-level councils. Representatives serving on these councils are from state agencies and local governments. To make sure the municipal perspective is considered and to help facilitate communication between the Coordinating Council and municipal officials, Stewart requested MASC President Lillian Flemming to appoint mayors to serve on both the district and statewide councils. The following were appointed in August:

Statewide Council

Mayor Doug Echols, Rock Hill

Piedmont District

Mayor Randy Randall, Clinton

Midlands District

Mayor Mary Clark, Camden



Pee Dee District

Mayor Kevin Johnson, Manning

Lowcountry District

Mayor Bill Rauch, Beaufort

Hometown Connection helps municipal officials fulfill responsibilities

Municipal officials take on many responsibilities when voted into office. One is looking out for constituents' needs — not only locally, but also on state and federal levels. Because municipal officials represent the level of government closest to home, they have a unique perspective of their constituents' needs and how legislation will affect their citizens. Therefore, it is a municipal official's responsibility to build a relationship with their legislator in an effort to keep them informed on how issues will affect the citizens that they both represent.

Once a relationship is built, a legislator is more likely to hear what a municipal official is saying about a particular issue. A face is put with a name.

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Compensating councilmembers: Questions and answers

Statutes

S.C. Code § 8-15-10. Determining compensation of officers and employees.

Except as otherwise provided or as prohibited by the Constitution of this State, the compensation of all officers and employees of the State or any political subdivision, department or agency thereof shall be as from time to time provided by the General Assembly or the particular political subdivision, department or agency concerned, as the case may be.

S.C. Code § 5-7-170. Salaries and expenses of mayor and councilmen determined by council through ordinance.

The council may determine the annual salary of its members by ordinance; provided, that an ordinance establishing or increasing such salaries shall not become effective until the commencement date of the terms of two or more members elected at the next general election following the adoption of the ordinance, at which time it will become effective for all members whether or not they were elected in such election. The mayor and council members may also receive payment for actual expenses incurred in the performance of their official duties within limitations prescribed by ordinance.

The Municipal Association of South Carolina frequently receives questions concerning compensation and benefits for councilmembers. The following is a compilation of representative questions, with responses excerpted from a paper prepared by Roy Bates. More detailed answers, including state code/case law citations, appear on MASC's Web site (www.masc.sc). MASC mailed this paper to mayors, managers/administrators and clerk/treasurers in September. *Please note: The comments are general in nature, and the final position a municipality should take on some issues will depend on the facts in a particular case. The municipal attorney should be consulted before taking action on compensation of council.*

Q. How are council salaries set?

A. The annual salary of councilmembers must be set by ordinance adopted by a majority vote of council. The ordinance is effective for all members of council at the commencement or terms of two or more members elected at the next general election following the adoption of the ordinance. There is no statutory limit on the amount or type of compensation. There is no statutory requirement that compensation be equal for all offices (mayor, mayor pro tempore, councilmember). A separate ordinance is not required, and the salaries may be set in a section of another ordinance, such as the budget ordinance, by specific reference and compliance with the effective date requirement. Although the mayor in the mayor-council form of government may be authorized to set compensation and benefits for employees, the mayor cannot set compensation or benefits for council. Council must do this by ordinance.

Q. Can council salaries be increased by automatic adjustment for inflation?

A. No. S.C. Code § 5-7-170 does not specifically address automatic escalation. It can be argued that the absence of a prohibition allows a council to include an escalation clause in the salary ordinance under Home Rule powers. However, an automatic annual escalation clause may be subject to challenge on the grounds of unlawful delegation of legislative power. The attorney general has concluded that an automatic yearly salary increase for cost of living would violate the statutory requirements for council action and the effective date for salary increases.

Q. Can a portion of compensation be based on meeting attendance?

A. The statutes do not prescribe a formula for compensation. In the absence of a statutory formula, council may exercise discretion in fixing the method of compensation. There appears to be nothing that prohibits basing a portion of the compensation on actual attendance at council meetings.

Q. Can fringe benefits be added to council compensation?

A. Costs of health insurance and retirement benefits may be included in compensation if set by ordinance. Payment for these benefits should be set forth in the ordinance setting salaries. If the costs are included as a part of the salary for the office, the municipality would then have a legal obligation to provide them. Health insurance coverage for a spouse or

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COMPENSATION continued from page 2 dependent must not be provided at public expense. A member of council may be treated the same as an employee for some purposes; however, S.C. Code § 5-7-170 requires council compensation be set by ordinance, and it does not provide for automatic addition of benefits given to all municipal employees. There is no equal compensation requirement for the offices of mayor and member of council. Therefore, the costs for these benefits could be provided in compensation for the office of mayor only.

Use of a motor vehicle may be included in compensation. Council may prescribe by ordinance for use of a vehicle as a part of the compensation for the office of mayor or councilmember. Income tax consequences should be considered. A vehicle could be provided for the office of mayor only.

Longevity increases are questionable. Longevity increase provisions are not recommended. The attorney general opined that a South Carolina court would likely conclude longevity salary increases are improper. Length of service by an office holder is a personal characteristic. The salary for an office is incidental to the office itself and not the person holding the office.

Bonuses are unconstitutional. Payments of extra compensation after services rendered would be compensation above that which the municipality is legally obligated to pay.

Q. What expenses of councilmembers may be paid with public funds?

A. Payment must be for actual expenses incurred. A common-sense reading of S.C. Code § 5-7-170, as required by case law, leads to the conclusion that members of council may receive **payment for only those expenses that exist at the time of payment.** Direct payment by a municipality for registration, reservation and other known expenses for a function within the official duties of a member of

council would not be prohibited by this interpretation of the statute. These expenses would be incurred at the time of submission of registration forms. There is no authorization for an expense allowance of a fixed amount to cover future unknown expenses. The common practice of giving employees advances for travel and other expenses for which they must account and deduct from reimbursement claims is not specifically authorized for members of council.

Expenses must be incurred in performance of official duties. S.C. Code § 5-7-170 does not define “official duties.” Official duties of members of municipal council could be said to be those duties necessary to exercise the powers of a municipality vested in council by statute. Under Home Rule, these powers relate to the health, safety, peace, order, convenience and general welfare of municipal citizens. The payment of public funds for expenses of an official in connection with an activity that promotes these purposes and benefits the public, as opposed to private interest, would be justified under the “public purpose” requirement.

Discretionary expenses for the “public good” are not authorized. There is no authority for budgeting or advancing public funds to a member of council to be disbursed in the discretion of the official for projects of his or her choosing. A project must be approved by council before public funds are expended for it. Budgeting accounts controlled by individual members of council without standards set by council for expenditure of public funds opens the door for abuse of discretion and misuse of public funds. These payments cannot be disguised as “expenses” of the member of council. Authorizing expenditure of public funds is a legislative function that may be exercised only by the governing body by ordinance. Delegation of this authority to one member of the governing body is unconstitutional.

Expenses of spouse may not be paid. The Supreme Court ruled in

Brown v. Wingard, 285 S.C. 478, 330 S.E.2d 301 (1985) that expenses for spouses of councilmembers attending a National League of Cities convention were not an “actual expense incurred in the performance of their official duties” and may not be paid by the city. The court further ruled the expenditures were not for a valid public purpose.

Q. How may expenses be paid?

A. S.C. Code § 5-7-179 provides: “members may also receive payment for actual expenses ... within limitations prescribed by ordinance.” It does not specify how payment is to be made. This is a matter properly addressed in the salary ordinance. Since all municipalities are required to have an annual independent audit, there must be a paper trail for all expenditures of public funds. A **signed voucher** or reimbursement form itemizing and substantiating expenses with receipts is a commonly used method to document expenditures. There should never be “unvouchered expenses.”

Advances for expenses are not specifically authorized. If advances are made, the officer holds the funds in trust and must properly apply them to authorized expenses. Advances must be deducted from amounts claimed for reimbursement.

Credit cards for charges to the municipality are not specifically authorized by statute. If credit cards are given to the mayor or councilmembers for official use, the cards are held in trust and must be used only for authorized expenditures. A clear policy on use of credit cards should be adopted by council. Credit card charges must be deducted from amounts claimed for reimbursement.

Per diem or annual allowances are not authorized. Only actual expenses can be paid. Expenses for certain purposes can be limited by ordinance on a per diem basis (e.g., reimbursement for lodging or meals cannot exceed a specified amount per day).

Credit cards can help municipalities meet citizens' needs

Municipalities are no different in today's world than the hardware store on Main Street or the clothing company that mails you a catalog. All are being asked by their customers to accept credit cards for payment of products and services. The question for municipalities has always been whether the benefits of accepting credit cards outweigh the costs. With a contract soon to be signed by the state of South Carolina, the answer for municipalities is a definitive "yes."

Retail stores have accepted credit cards for years. In fact, it is rare for a retail store not to accept them. Customers would describe a store owner who does not accept credit cards as being "behind the times" or "not customer friendly."

Accepting credit cards has become so commonplace that citizens are asking municipalities to allow them to pay their taxes, utility services and court fines with a credit card. Many municipalities have resisted this request, arguing that the cost is too high, while others have contemplated passing the cost on to citizens as a "convenience fee." While a convenience fee may appear to be an option, tight restrictions imposed by Visa and MasterCard make it practically impossible to use. It does not seem proper to charge the citizen a fee when the municipality benefits from accepting credit cards.

One benefit is that the municipality doesn't have to deal with trying to collect on a bad check. Payments are guaranteed to the municipality. Bills are more likely to be paid on time, and the municipality has quicker access to funds when paid by credit card than by check. Some experts argue that accepting credit

For more information about accepting credit cards, attend the S.C. Municipal Finance Officers, Clerks and Treasurers Association Annual Meeting scheduled for October 15-17.

Other topics include:

- **Hometown Security**
- **Crafting an Effective Presentation to Council**
- **Revenue Opportunities for Municipalities**

cards can be cheaper than accepting checks. However, the cost can vary considerably depending upon the contract a municipality negotiates for credit card services.

Three fees are paid each time a credit card transaction occurs. One fee is paid to the bank that issued the credit card to the customer. While it is paid to the issuing bank, the fee is set by Visa or MasterCard and is not negotiable by the municipality. The fee charged varies based on many factors regarding the transaction (Internet transaction, face-to-face transaction, personal or company credit card, card swiped or keyed, etc.). At the end of 2002, there were 28 different rates that applied to Visa

transactions and 31 different rates to MasterCard transactions.

The second fee is set by and paid to Visa and MasterCard. This fee is the same for all transactions and is also not negotiable by the municipality.

The third fee is paid to the bank that the municipality contracts with to process its credit card transactions. This is the only fee that is negotiable and usually depends on transaction volume. For this reason, the State Treasurer's Office will soon enter into a contract with SunTrust Merchant Services that takes advantage of the credit card volume generated by all state agencies, counties and municipalities. With the combined "buying power" of all these entities, the state has negotiated a contract with a rate of 1.85 percent of the transaction amount.

This is a flat rate without regard to various transaction situations, including whether the card is swiped or the account number manually entered, whether a personal or corporate card is used, or whether the transaction takes place over the phone, on the Internet or in person. The state contract guarantees the rate the municipality pays is constant, even though the issuing bank will receive various payments as set by Visa and MasterCard based on these transaction types. Also under the state contract, there is no additional cost per transaction. Banks will sometimes charge a percentage rate plus 5 cents or 10 cents per transaction. This is not the case under the state contract.

When evaluating rates offered by banks for processing credit card payments, make sure the rate quoted is a total rate and not just the rate paid to

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Or, better yet, the legislator recognizes the municipal official is representing the town's best interests and has important insight into the issue's impact.

Trying to navigate the General Assembly can be overwhelming — finding your way around the Statehouse, figuring out the legislative schedules and, most importantly, being knowledgeable about the issues. This is where MASC's Hometown Connection comes in. It is the key to a successful connection between municipal officials and their state legislators.

On Hometown Connection days, municipal officials are greeted by MASC staff, briefed on the pending legislation important to municipalities, given the General Assembly's schedule and even assisted in finding legislators' offices and committee meeting rooms.

To participate in MASC's Hometown Connection, municipal officials should come to the MASC office at 1411 Gervais Street, Columbia, at 10:30 a.m. on their county's designated date.

News Briefs



■ MASC welcomes Michelle Fort Willm to its staff as an administrative assistant to support the executive director, the director of intergovernmental relations and the general counsel. Michelle comes to MASC with experience as a legal assistant with two Columbia law firms.

■ Sara B. Ridout, clerk for the City of Aiken, received the Master Municipal Clerk designation, the highest level offered through the International Institute of Municipal Clerks Academy Program.

■ Anne B. Stewart, town clerk for the Town of Winnsboro, was awarded the designation of Certified Municipal Clerk from the Institute of Municipal Clerks for achieving its educational, experience and service requirements.

■ The International City/County Management Association (ICMA) has for sale the fourth edition of *Evaluating Financial Condition: A Handbook for Local Government*. The handbook includes information on how to chart your financial path, maximize revenue and minimize waste. To order, call 800.745.8780 or visit www.bookstore.icma.org.

■ A team from Myrtle Beach Fire Department won the Combat Challenge Relay during the State Firefighters' Association conference, July 16-19 at the Myrtle Beach Convention Center. The Combat Challenge consists of five strenuous events that replicate what firefighters face on the job.

■ The South Carolina Department of Transportation (SCDOT) awarded more than \$8 million for the 2003 Non-Urban Area Transportation Enhancement Projects. Fifty-three projects received funding, of which 46 were municipal projects. The SCDOT mails applications in January, and the deadline is in March. For more information or to be put on next year's mailing list, call Cathy Rice at 803.737.1952.

January 27

■ Anderson, Cherokee, Chester, Fairfield, Greenville, Lancaster, Oconee, Pickens, Spartanburg, York

February 18

■ All municipalities for MASC's Winter Meeting and Legislative Conference

March 30

■ Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, Orangeburg, Richland

April 27

■ Abbeville, Chesterfield, Clarendon, Darlington, Edgefield, Greenwood, Kershaw, Laurens, Lee, Marlboro, McCormick, Newberry, Saluda, Sumter, Union

May 25

■ Beaufort, Berkeley, Charleston, Colleton, Dorchester, Dillon, Florence, Georgetown, Hampton, Horry, Jasper, Marion, Williamsburg

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the processing bank. Remember, the bank that issued the customer's credit card, as well as Visa and MasterCard, charge fees. Be aware that some banks quote a flat rate for their services, while the varying rates set by Visa and MasterCard and paid to the issuing bank still apply.

Also, make sure the rate quoted is not for only one type of transaction — the simplest and least risky — but that the rate applies to all transactions. For example, if the card will not swipe and the account number and expiration date must be manually keyed, make sure this transaction will not cost the

municipality more in fees. If a corporate card is presented, make sure the transaction will not cost the municipality additional fees. Make sure credit card information taken over the phone will not cost the municipality more in fees.

Most importantly, make sure the person evaluating any bids for credit card services fully understands the specifics of the bid. MASC is available to assist municipal staff in evaluating credit card options and will notify municipalities when the state contract is executed.

For assistance, contact Miriam Hair at 803.933.1204 or mhair@masc.sc.

2003 Achievement Award Winner

Public Safety Category: Town of Lexington

Businesses and citizens pull together to support local police officers

The Town of Lexington has experienced phenomenal growth over the last decade. Consequently, the demand for services and resources has also grown exponentially, particularly in the public safety area. To respond to the community, the Town explored creative ways to provide and fund these much-needed services. The result was the creation of the Lexington Police Department's Adopt-A-Cop Program.

The program's goal is to develop an effective public and private partnership to support community-based law enforcement. The Adopt-A-Cop Program allows individuals and

businesses to support specific programs or to purchase specific items such as bullet-proof vests, school resource officer emergency kits, traffic safety promotional materials, the Ident-A-Kid child identification program, police vehicles, teddy bears for crime victims, car safety checks, community fairs and forensic laboratory equipment. Donors receive a personal thank-you from the police department and are recognized at Town Council meetings.

Although the Town provided the original funding and staff time, the goal is to make the program self-sustaining. Marketing the Adopt-A-Cop Program is done through presentations during chamber of commerce meetings, briefings to local civic organizations and meetings with individual members of the business community.

To date, the program has been successful in receiving funding from both major corporations and from private contributors. Because of this community support, the police department is able to provide additional public safety services that would not have been possible without the Adopt-A-Cop Program.

For more information about this project, contact Mary Louise Resch at 803.356.8238.



Top, Adopt-A-Cop Program funds purchased teddy bears for crime victims.

Above, Lexington's Adopt-A-Cop Program has received contributions from major corporations.

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.



For Sale

■ The Town of Reevesville has a 1972 Ford F750 John Bean fire engine for sale. The asking price is \$12,500 or best offer. Contact Bert Judy at 843.563.2531 or at jdsur@earthlink.com.

■ The City of Isle of Palms has a '97 Pierce 100-foot aerial ladder with nozzle for sale. The truck may be seen at Station Two, 44 Forty-First Avenue, Isle of Palms. Contact Fire Chief Ann Graham at 843.886.4410 or at 843.224.9269, or e-mail ltucker@iop.net.

■ The City of Seneca has for sale a 1999 Business Forms Burster, used to separate bills on continuous feed computer forms. Call Jeanne Burdette at 864.885.2728.

Relationship issues in the workplace

Mike Malone, attorney, Malone and Thompson L.L.C.

Every workplace is a complex web of relationships. Your coworker might also be an acquaintance, a friend, a neighbor, a relative, a member of your church, the coach of your child's sports team, the wife of your insurance agent or your hairdresser's brother. These relationships can be strong or weak, good or bad, close or distant, pleasant or unpleasant. And these relationships are constantly evolving. It has been said that all relationships are either improving or diminishing at any given point in time. The dynamics of today's workplace are strongly and constantly influenced — every day and all the time — by the level and nature of interconnectedness that exists among any particular workforce.

Consider the following scenario:

Two non-supervisory coworkers are "dating."

Is this a problem? How does your organization deal with this type of "workplace relationship" issue? Does this scenario implicate "legal" issues? Or does this scenario simply represent "employee relations" issues? Or does this scenario generate both "legal" and "employee relations" issues? By the way, can "employee relations" issues ever be more problematic than "legal" issues?

For exceptionally good reasons, all employers (public and private) should strictly prohibit their *supervisors* from becoming/being romantically involved with their *subordinates*. These reasons include the desire to avoid sexual harassment claims, the need for unclouded accountability and the desire to avoid the negative feelings generated by favoritism that is motivated by anything other than quality of performance. But what about *non-supervisory* employees who are involved in romantic relationships with their non-supervisory coworkers? With consensual relationships between non-supervisory employees, the risks of harassment claims, accountability

S.C. Municipal Personnel Association Annual Meeting topics

- HR Basics
- Records Setup and Retention
- Interviewing: To Ask or Not to Ask
- Disciplinary Procedures

problems and allegations of favoritism are minimal. This does not mean, however, that such relationships cannot cause problems. Excessive interaction, inappropriate displays of affection, reduction in productivity and "lovers' spats" are just some of the problems that can result when romantically involved non-supervisory coworkers occupy the same workplace. These examples represent almost exclusively "employee relations" problems, rather than "legal" problems.

Public sector employers are subject to the United States Constitution, which preserves, among other rights, the right to "freedom of association," and effectively the right to be involved in intimate relationships. Significantly, these rights are not absolute and have limited effect in the public sector workplace. Our firm's general, practical advice to public sector employers is to address such relationships in the workplace only when they are adversely affecting the workplace. Public sector employers, however, should not hesitate to address and correct legitimate workplace problems caused by these relationships whenever they arise.

For more specific information on how to handle problems arising from romantic relationships in the workplace, attend Mike Malone's session, "Relationships at Work — Legal Issue, Employee Relations Issue or Both?" at the S.C. Municipal Personnel Association Annual Meeting, scheduled for November 12-14 at Holiday Inn Oceanfront, Hilton Head Island.



Classifieds

■ The City of Hanahan is accepting applications for a building inspector/code enforcer. Training in building construction, blueprint reading and building inspection and certification in residential I & II are required. Send resumé to City of Hanahan, Attn: Randy Kinard/Building Official, 1255 Yeamans Hall Road, Hanahan, SC 29406. For more information, call 843.554.4221 extension 132.

■ The City of Hanahan is accepting applications for a firefighter/EMT. Send resumé to City of Hanahan, Attn: Chief Barham, 1255 Yeamans Hall Road, Hanahan, SC 29406. For more information, call 843.554.4221 extension 121 or fax 843.747.3220.

■ The City of Beaufort Planning and Development Services Department is seeking a plans examiner. Applicants must possess a high school diploma and ICC plans examiner certification. Apply to City of Beaufort, Attn: Human Resources, 302 Carteret Street, Beaufort, SC 29902 or online at www.cityofbeaufort.org.

■ The City of Beaufort is seeking an assistant to the city manager. Applicants must have a bachelor's degree in public administration or related subject. Send resumé to City of Beaufort, Attn: Human Resources, P.O. Drawer 1167, Beaufort, SC 29901, e-mail employment@cityofbeaufort.org or apply online at www.cityofbeaufort.org.

■ The City of Simpsonville is accepting applications for a finance director. Send applications to City Hall, Attn: Human Resources, 118 N.E. Main Street, Simpsonville, SC 29681.



Educational Opportunities

S.C. Business Licensing Officials Association

■ **October 14-16**, will hold its Annual Meeting at the Hyatt Regency in Greenville. Topics include "Court Enforcement of Business Licensing Ordinances," "Determining Point of Sale," "Crafting an Effective Presentation to Council" and "Everyday Ethics."

S.C. Municipal Finance Officers, Clerks and Treasurers Association

■ **October 15-17**, will hold its Annual Meeting at the Hyatt Regency in Greenville. Topics include "Home-town Security," "Crafting an Effective Presentation to Council," "Revenue Opportunities for Municipalities" and "Accepting Credit Cards: The Price is Right."

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

Community Builders

■ **October 23-24**, will hold its Annual Meeting in Newberry. Topics include "Fund-Raising Challenges and Solutions," "Listening to the Landscape and Discourse of the Street" and Community Builders' Dine-Around the Newberry Way.

S.C. Utility Billing Association

■ **October 29**, will hold its Fall Meeting at the Clarion Town House in Columbia. Topics include risk management and safety issues, bankruptcy and its ramifications, tactical communication and a legislative update.

S.C. Community Development Association

■ **November 5**, will hold its Winter Meeting at the State Museum in Columbia. Topics include "Home Inspection: A Primer on Mold Detection,

Elimination & Liability," "Neighborhood Revitalization and Local Government" and "Meeting the Challenges of the Growing Hispanic Presence in S.C. Communities."

S.C. Municipal Personnel Association

■ **November 12-14**, will hold its Annual Meeting at the Holiday Inn Oceanfront in Hilton Head Island. Topics include "Interviewing: To Ask or Not to Ask," "Relationships in the Workplace," "Disciplinary Procedures" and "HIPAA Highlights."

S.C. Association of Stormwater Managers

■ **November 21**, will hold its Quarterly Meeting at the State Museum in Columbia. Topics include "American Public Works Association Stormwater Management 101" and "NPDES Phase II Permit."



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