CHAPTER 13

Council‑Manager Form of Government

**SECTION 5‑13‑10.** Applicability of Chapter 7.

 Except as specifically provided for in this Chapter the structure, organization, powers, duties, functions and responsibilities of municipal government under the council‑manager form shall be as prescribed in Chapter 7.

HISTORY: 1962 Code Section 47‑80; 1975 (59) 692.

**SECTION 5‑13‑20.** Structure of council‑manager form of government; election of members of council and mayor.

 (a) Under the council‑manager form of government there shall be a municipal council composed of a mayor and four, six or eight councilmen.

 (b) The members of council and the mayor shall be elected in accordance with Chapter 15.

HISTORY: 1962 Code Section 47‑81; 1975 (59) 692.

LIBRARY REFERENCES

Municipal Corporations 81.

Westlaw Key Number Search: 268k81.

C.J.S. Municipal Corporations Section 211.

Attorney General’s Opinions

A city council may ratify a mayor’s actions to authorize payment for the services of an attorney even though the services were improperly obtained. S.C. Op.Atty.Gen. (Nov. 18, 2010) 2010 WL 4982614.

**SECTION 5‑13‑30.** Powers and duties of municipal council.

 All legislative powers of the municipality and the determination of all matters of policy shall be vested in the municipal council, each member, including the mayor, to have one vote. Without limitation of the foregoing, the council shall:

 (1) Employ a manager;

 (2) Establish other administrative departments and assign and distribute the work thereof upon recommendation of and with the approval of the manager;

 (3) Adopt the budget of the municipality;

 (4) Authorize the issuance of bonds by bond ordinance, subject to such restrictions and limitations as may be prescribed by law;

 (5) Have the power to inquire into the conduct of any office, department or agency of the municipality, make investigations as to municipal affairs and give the public information concerning them;

 (6) Adopt plats;

 (7) Adopt and modify the official map of the municipality;

 (8) Provide for an independent annual audit of the books and business affairs of the municipality and for a general survey of municipal business;

 (9) Provide for the general health and welfare of the municipality in accordance with the statute law of the State with reference to the general police powers granted to municipalities;

 (10) Enact ordinances of any nature and kind, not prohibited by the law or Constitution of the State or of the United States; and

 (11) With the advice of the manager, appoint all committees, boards and commissions relating to the affairs of the municipal government, except as otherwise provided by law.

HISTORY: 1962 Code Section 47‑82; 1975 (59) 692.

CROSS REFERENCES

Official maps, generally, see Sections 6‑7‑1210 et seq.

LIBRARY REFERENCES

Municipal Corporations 60.

Westlaw Key Number Search: 268k60.

C.J.S. Municipal Corporations Sections 138, 151.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 53, County and Municipal Employees.

Attorney General’s Opinions

A town council member should have access to personnel records, financial documents, such as cell phone records which are paid for by the town, and professional contract documents. S.C. Op.Atty.Gen. (October 16, 2014) 2014 WL 5439610.

Discussion of whether a City Council Member may observe the operations of the City’s Public Safety Department. S.C. Op.Atty.Gen. (June 19, 2013) 2013 WL 3362070.

The City Council of Florence has authority to create new positions and establish job descriptions for such positions, but whether the Council can place certain restrictions on particular positions is a factual determination that may only be made by a court. S.C. Op.Atty.Gen. (March 16, 2011) 2011 WL 1444705.

A city council may ratify a mayor’s actions to authorize payment for the services of an attorney even though the services were improperly obtained. S.C. Op.Atty.Gen. (Nov. 18, 2010) 2010 WL 4982614.

A mayor does not have authority to hire outside counsel without approval except in very extenuating circumstances. S.C. Op.Atty.Gen. (Nov. 18, 2010) 2010 WL 4982614.

The City of Columbia would be well within its authority to instruct the Chief of Police that an accident investigation involving an elected official be turned over to the Highway Patrol and to enact an ordinance that would allow future accident investigations to be turned over to the Highway Patrol when involving an elected official. S.C. Op.Atty.Gen. (May 6, 2010) 2010 WL 2320800.

NOTES OF DECISIONS

In general 1

Contracts 2

1. In general

A city could not be held liable for the censorship acts of its manager and convention center director, who had ordered that a painting which they found offensive be covered at an art exhibit in the lobby of the convention center, where the city council never met or voted on the decision made by the manager and the director, the form of government adopted by the city provided that the city council did not have the authority to delegate matters of city policy to the manager and the director, and, although some discussion was held on the subject informally with some members of the council, they were not required to call a meeting to formally vote on the action. Todd v. Smith (S.C. 1991) 305 S.C. 227, 407 S.E.2d 644, certiorari denied 112 S.Ct. 938, 502 U.S. 1059, 117 L.Ed.2d 109.

2. Contracts

Alleged promises or representations made by city employees, such as supervisors and human resource employees, did not create a unilateral contract between city and retired firefighters and police officers for continuing free health insurance; retirees failed to show any action by the city council or city manager authorizing such contracts or granting the authority to these employees to enter the contract. Bishop v. City of Columbia (S.C.App. 2013) 401 S.C. 651, 738 S.E.2d 255, rehearing denied, certiorari denied, on remand 2015 WL 9999556. Municipal Corporations 187(2); Municipal Corporations 200(2); Public Employment 388(2); Public Employment 516(4)

**SECTION 5‑13‑40.** Councilmen prohibited from holding other offices during term, appointing or removing employees whom manager is empowered to appoint and dealing with employees under control and supervision of manager.

 (a) Except where authorized by law, no councilman shall hold any other municipal office or municipal employment while serving the term for which he was elected to the council.

 (b) Neither the council nor any of its members shall in any manner be involved in the appointment or removal of any municipal administrative officers or employees whom the manager or any of his subordinates are empowered to appoint.

 (c) Except for the purpose of inquiries and investigations, neither the council nor its members shall deal with municipal officers and employees who are subject to the direction and supervision of the manager except through the manager, and neither the council nor its members shall give orders to any such officer or employee, either publicly or privately.

HISTORY: 1962 Code Section 47‑83; 1975 (59) 692.

LIBRARY REFERENCES

Municipal Corporations 142, 155.

Westlaw Key Number Searches: 268k142; 268k155.

C.J.S. Municipal Corporations Sections 337, 346, 420 to 421.

Attorney General’s Opinions

Discussion of whether a City Council Member may observe the operations of the City’s Public Safety Department. S.C. Op.Atty.Gen. (June 19, 2013) 2013 WL 3362070.

NOTES OF DECISIONS

In general 1

1. In general

Although Section 5‑13‑40(c) is not violative of the First and Fourteenth Amendments to the United States Constitution, the application of the statute by the city council of Rock Hill was unconstitutional where the council had used the statute to prevent the president of the Firefighters Association from addressing the council concerning its policy relating to working conditions; there was no conflict with the statute since, contrary to the council’s contention, the association president had not intended to negotiate or even discuss negotiation of a collective bargaining agreement with the council. Local 2106, Intern. Ass’n of Firefighters, AFL‑CIO v. City of Rock Hill, S.C. (C.A.4 (S.C.) 1981) 660 F.2d 97.

**SECTION 5‑13‑50.** Employment and qualifications of manager.

 The council shall employ a manager and fix his compensation. The manager shall be employed solely on the basis of his executive and administrative qualifications. He need not be a resident of the municipality or state at the time of his employment and may reside outside the municipality while in office only with the approval of the council.

 No councilman or mayor shall be employed as manager of the municipality from which he was elected during the term for which he shall have been elected.

HISTORY: 1962 Code Section 47‑84; 1975 (59) 692.

LIBRARY REFERENCES

Municipal Corporations 138, 142.

Westlaw Key Number Searches: 268k138; 268k142.

C.J.S. Municipal Corporations Sections 337 to 341, 343 to 348.

**SECTION 5‑13‑60.** Surety bonds of manager and other municipal employees.

 The municipal council may require suitable surety bonds of the manager and other municipal employees conditioned for the faithful performance of their duties. The cost of such bonds shall be paid by the municipality.

HISTORY: 1962 Code Section 47‑85; 1975 (59) 692.

LIBRARY REFERENCES

Municipal Corporations 145.

Westlaw Key Number Search: 268k145.

C.J.S. Municipal Corporations Section 359.

**SECTION 5‑13‑70.** Term of employment and compensation of manager; removal of manager by council.

 The term of employment of the manager shall be at the pleasure of the council and he shall be entitled to such compensation for his services as the council may determine. The council may, in its discretion, employ the manager for a definite term. If the council determines to remove the manager he shall be given a written statement of the reasons alleged for the proposed removal and the right to a hearing thereon at a public meeting of the council.

 Within five days after the notice of removal is delivered to the manager, he may file with the council a written request for a public hearing. This hearing shall be held at a council meeting not earlier than twenty days nor later than thirty days after the request is filed. The manager may file with the council a written reply not later than five days before the hearing. The removal shall be stayed pending the decision at the public hearing.

HISTORY: 1962 Code Section 47‑86; 1975 (59) 692.

LIBRARY REFERENCES

Municipal Corporations 149(2), 159.

Westlaw Key Number Searches: 268k149(2); 268k159.

C.J.S. Municipal Corporations Sections 361 to 363, 423, 425, 428, 432, 436, 438, 440 to 442.

NOTES OF DECISIONS

In general 1

1. In general

A city manager was wrongfully excluded from the performance of his duties, and thus was entitled to his salary and associated benefits despite the fact that he neither provided any services nor sought reinstatement after his termination, where (1) the reasons stated in his notice of removal were impermissibly vague, and (2) the town council declined to elaborate further on such reasons at a subsequent public proceeding. Drawdy v. Town of Port Royal (S.C. 1992) 308 S.C. 462, 419 S.E.2d 215. Municipal Corporations 162.3; Public Employment 421

A Master‑in‑Equity did not abuse his discretion in declining to apply the doctrine of “avoidable consequences” to offset the compensation a city manager could have earned during the period in which he was wrongfully excluded from the performance of his duties, since a public officer discharged unlawfully is entitled to all wages without offset, and thus a public officer who has not been properly discharged would likewise be entitled. Drawdy v. Town of Port Royal (S.C. 1992) 308 S.C. 462, 419 S.E.2d 215.

Although a town council can fire its city manager at its pleasure, Section 5‑13‑70 requires the council to inform the manager of the reasons for termination with sufficient specificity to allow the manager to fashion a response. Two of the 4 reasons given for a manager’s termination—that the manager’s relationship with the council was such that it would be in the best interest of the town for a new manager to be employed, and that the manager was disloyal and critical to council members—were insufficiently specific, and therefore the council failed to comply with Section 5‑13‑70. Drawdy v. Town of Port Royal (S.C.App. 1990) 302 S.C. 125, 394 S.E.2d 25.

**SECTION 5‑13‑80.** Designation by manager of administrative officer to act in manager’s absence or disability; effect of manager’s failure to designate officer.

 By letter filed with the municipal clerk the manager shall designate a qualified municipal administrative officer to exercise the powers and perform the duties of manager during his temporary absence or disability.

 In the event of the failure of the manager to make such designation the municipal council may by resolution appoint an officer of the municipality to perform the duties of the manager until he shall return or his disability shall cease.

 During such absence or disability, the council may revoke such designation at any time and appoint another officer of the municipality to serve until the manager shall return or his disability shall cease.

HISTORY: 1962 Code Section 47‑87; 1975 (59) 692.

LIBRARY REFERENCES

Municipal Corporations 149(1).

Westlaw Key Number Search: 268k149(1).

C.J.S. Municipal Corporations Section 361.

**SECTION 5‑13‑90.** Responsibilities of manager.

 The manager shall be the chief executive officer and head of the administrative branch of the municipal government. He shall be responsible to the municipal council for the proper administration of all affairs of the municipality and to that end, subject to the provisions of this chapter, he shall:

 (1) Appoint and, when necessary for the good of the municipality, remove any appointive officer or employee of the municipality and fix the salaries of such officers and employees, except as otherwise provided in this chapter or prohibited by law and except as he may authorize the head of a department or office to appoint and remove subordinates in such department or office;

 (2) Prepare the budget annually, submit it to the municipal council and be responsible for its administration after adoption;

 (3) Prepare and submit to the municipal council at the end of each fiscal year a complete annual report on the finances and administrative activities of the municipality for the preceding year and make such other financial reports from time to time as may be required by the council or by Chapters 1 through 17;

 (4) Keep the municipal council advised of the financial condition and future needs of the municipality and make such recommendations as may seem to him desirable; and

 (5) Perform such other duties as may be prescribed by law or required of him by the municipal council, not inconsistent with the provisions of Chapters 1 through 17.

HISTORY: 1962 Code Section 47‑88; 1975 (59) 692.

LIBRARY REFERENCES

Municipal Corporations 168.

Westlaw Key Number Search: 268k168.

C.J.S. Municipal Corporations Section 370.

NOTES OF DECISIONS

In general 1

1. In general

Provision in state statute that city manager in council‑managed city is empowered under state law to dismiss any city employee for good of municipality indicates that city employees do not have property interest in employment, but rather hold position at will and pleasure of city. Bunting v. City of Columbia (C.A.4 (S.C.) 1981) 639 F.2d 1090.

Police officer has no claim to property interest in his employment under Section 5‑3‑90(1), which permits City Manager to appoint and remove for good cause any employee of municipality, and which courts have consistently interpreted as providing only for at‑will employment of municipal employees. Mills v. Leath, 1988, 709 F.Supp. 671. Constitutional Law 4171

Police officers dismissed by city did not have sufficient “property” or “liberty” interest to invoke due process protection of Fourteenth Amendment, where by terms of their contract they were employed “at will” and did not have “an enforceable expectation of continued public employment.” Bane v. City of Columbia (D.C.S.C. 1979) 480 F.Supp. 34.

Conclusions of lower court that City Manager had authority to make binding agreements in furtherance of city policies, that he employed plaintiff to undertake services for City, that members of the City Council knew plaintiff was performing these services, and that the City actually benefitted from the services were supported in the evidence, and failure of City Council to ratify a formal contract under these facts was mere technicality not entitling it to escape liability for the reasonable value of the services of plaintiff as contracted for by the City Manager. Townes Associates, Ltd. v. City of Greenville (S.C. 1976) 266 S.C. 81, 221 S.E.2d 773. Estoppel 62.6

**SECTION 5‑13‑100.** Council authorized to create, change and abolish offices, departments or agencies.

 Municipal council may, by ordinance, create, change and abolish offices, departments or agencies of municipal government upon the recommendation of the manager or may, in accordance with such recommendations, assign additional functions and duties to such offices. The head of each department shall be designated director thereof and shall have supervision and control over his department subject, however, to the direction of the manager.

HISTORY: 1962 Code Section 47‑89; 1975 (59) 692.

LIBRARY REFERENCES

Municipal Corporations 177.

Westlaw Key Number Search: 268k177.

C.J.S. Municipal Corporations Sections 445, 448 to 449, 537.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 53, County and Municipal Employees.