MEMORANDUM

TO: Mayor Ballengee
Members of Town Council
Barry Helms

FROM: Jim H. Guynn, Jr., Esq.

DATE: September 6, 2011

RE: Appointment of Town Officers and Council Organizational Meeting

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Prior to changing the Charter to provide for a November election date, the Charter required that Town Council conduct its first meeting in September. Traditionally, Council appointed officers at that meeting. Now, the Town Charter provides that the first meeting of the Council elected in November is in January. With this being the first year of November elections, the question has arisen about appointments of Town officials from September through January.

Section 15.2-1503 of the Code of Virginia addresses tenure of officers and employees of counties, cities, and towns. The Virginia Code states that "all appointments of officers and hiring of other employees by a locality shall be without definite term . . ." Apparently, the resolution reappointing town manager, town attorney, etc., provided in 2010 for appointment for the fiscal year. It does not really matter since state law says that the appointment is for an indefinite term; however, we will work with the Clerk to clarify the resolution in the minutes next time. In my opinion, the Council is free to address this issue of either of two ways. First, since the state code says there is no definite term for town officials, one could argue that there is no need for the Council to take any action. Second, Town Council could simply pass a resolution declaring that all appointments of Town officials will remain in effect until the first meeting in January.

In the future, Council only needs to worry about appointing Town officials after elections. Since those appointments are without definite term, there is no need for a reappointment every year. By appointing after elections, it gives a new council an opportunity to consider the appointments. This does nothing to change the at-will nature of the employment of Town officials who serve at the pleasure of Council. That is, Council can terminate Town officials at any time for any reason. The resolution in the future should simply appoint the Town officials effective a certain date and not include any end date on the appointment.

I will look forward to discussing this matter further at the meeting if necessary.