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OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

February 20, 1998

The Honorable Linda H. Short  
Senator, District No. 17  
502 Gressette Building  
Columbia, South Carolina 29202

RE: Informal Opinion

Dear Senator Short:

Attorney General Condon has forwarded your recent opinion request to me for reply. It is my understanding that in conjunction with the general election in November, Chester County will conduct a referendum in which the voters will be asked to vote on a change in the form of government. Chester County currently operates under the Council-Supervisor form of government. I have been informed that the county supervisor is elected for a term of four years and this position will be up for election in November. Questions have now arisen regarding what effect a change in government would have on the position of county supervisor. Specifically, must the county supervisor elected in the November election serve the full four year term or may a referendum question be placed on the ballot for an abbreviated term of office of one year.

As an initial matter, Section 4-9-10(c) of the South Carolina Code of Laws provides in pertinent part:

... In any referendum, the question voted upon, whether it be to change the form of government, number of council members, or methods of election, shall give the qualified electors an alternative to retain the existing form of government, number of council members, or method of election or change to one other designated form, number, or method of election. ...

*Request Letter*

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This Office has previously interpreted Section 4-9-10(c) and concluded that only two alternatives may be placed on the ballot. These alternatives being: retaining the present form of government, method of election, or number of council members, or changing to one designated form, number, or method of election. Op. Atty. Gen. dated November 10, 1986. Upon successful passage of the contemplated referendum, the county council would adopt an ordinance to implement the changes approved by the electorate. Such changes would then be submitted to the United States Department of Justice to be approved under the Voting Rights Act prior to their becoming effective. Op. Atty. Gen. dated April 25, 1988.

In an opinion dated August 18, 1982, this Office addressed the status of a county supervisor under the council-supervisor form of government when the form of government is changed. We stated:

If the referendum to change the form of government passes and the United States Department of Justice approves the new form, the county council members elected in the November 1982, general election will serve as the county council members in the new form of government. The new form of government can go into effect as soon as Justice Department approval is obtained and the county council takes the necessary actions to implement the change. (e.g., enactment of ordinance adopting the new form of government). If, however, there are members of the county council in the present form of government who are not provided for in the new form (e.g., if the county presently operates under the council supervisor form and changes to a non-supervisor form), those members are to serve out the remainder of their terms pursuant to Section 4-9-10(e), CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended, as follows:

(e) All members of the governing bodies of the respective counties serving terms of office on the date on which a particular form of county government becomes effective shall continue to serve the terms for which they were elected or appointed and until their successors are elected or appointed and have qualified.

Accordingly, the supervisor, being a member of the governing body, is authorized to serve out the remainder of his term notwithstanding the fact that the new form of government does not provide for a supervisor. The holdings in Hardy v. Francis, 273 S.C. 677, 259 S.E.2d 115 (1979), and Greenville County Council v. Ashmore, 274 S.C. 466, 265 S.E.2d 38

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(1980), are inapplicable because those supervisors (whose office, the Supreme Court said, was rendered a nullity by the adoption of the council-administrator form) were pre-home rule supervisors whose office was not continued in any of the four forms of county government. They were not members of the governing body and, therefore, did not come within the protection of Section 4-9-10(c), CODE OF LAWS OF SOUTH CAROLINA, 1976 (Cum.Supp.).

Analyzing your question in accordance with the 1982 opinion, if the voters of Chester County were to approve a change in the County's form of government and, therefore, abandon the council-supervisor form, the county supervisor elected during the general election in November would serve the full term of office, in this case four years.

In regards to whether a referendum question may be placed on the ballot shortening the term of office of the county supervisor to one year, Section 4-9-410 of the Code provides that supervisor shall serve a term of office of either two or four years. The law does not provide for a term of one year for the supervisor and, therefore, such a question would not be proper under the law.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch

Assistant Attorney General