



Ref. 505-2

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

September 5, 1995

R. Allen Young, Esquire
Attorney, Town of Mount Pleasant
Post Office Box 745
Mount Pleasant, South Carolina 29465

RE: Informal Opinion

Dear Mr. Young:

By your letter of August 29, 1995, to Attorney General Condon, you have advised that a member of the Mount Pleasant Town Council tendered his written resignation from Town Council on August 2, 1995, effective September 15, 1995, because he is moving out of the Town of Mount Pleasant. You have advised further that pursuant to S.C. Code Ann. §§5-7-200 and 7-13-190 (C), a special election has been scheduled for December 12, 1995, since the next regular election for council will not be held until September 1996. Further, the individual who is resigning has expressed an interest in serving on Town Council in a de facto capacity, after he moves from Mount Pleasant, until the vacancy is filled. The foregoing is in accordance with advice you have provided as attorney to the Town of Mount Pleasant. You have asked whether we concur with the advice you have given.

When a vacancy arises in the office of mayor or a member of a municipal council, §5-7-200 requires that an election be held to fill the remainder of the unexpired term at the next regular election or at a special election if the vacancy occurs one hundred eighty days or more prior to the next general election. Section 7-13-190 provides a schedule for the special election where one is required to be held to fill a vacancy such as this. Because the vacancy will occur more than one hundred eighty days prior to the next general election for the Town of Mount Pleasant, I concur with your advice to the Town that a special election would be required to fill the vacancy. In this regard, I am

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forwarding to you a copy of an opinion dated September 16, 1980, in which the same conclusion was reached.

Further, this Office has advised previously, by Op. Att'y Gen. dated October 4, 1984, that a city council member would vacate his office at the time he ceases to be a resident of the municipality; however, the individual would continue to serve in a de facto capacity on council until the vacancy is filled. A copy of the opinion is enclosed. I concur that the individual in question could continue to serve on Town Council in a de facto capacity until his successor has been selected and duly qualified.

This letter is an informal opinion only. It has been written by a designated Senior 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. I trust that the foregoing has satisfactorily responded to your inquiry and that you will advise if clarification or additional assistance should be needed.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General

Enclosures