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Office of the Attorney General

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January 13, 1988

The Honorable Herbert U. Fielding
Senator, District No. 42
608 Gressette Building
Columbia, South Carolina 29202

Dear Senator Fielding:

By your letter of December 21, 1987, you have asked that this Office interpret Section 5-15-30 of the Code of Laws of South Carolina (1976), as to when the times specified therein begin to run, considering the requirements of Section 7-11-85 of the Code concerning verification of signatures on a petition.

Section 5-15-30 specifies the procedure to be followed when a city council or the requisite number of electors of a municipality desire to change the number of council members to another number authorized by law or to change the method of election of council members. If a majority of the city council so act or fifteen percent of the registered electors of the municipality present a proper petition requesting the change,

then the municipal governing body shall call a special election not later than ninety days nor earlier than thirty days after the council action or receipt of the petition and publication of the notice of election.
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1/ Section 5-15-50 of the Code requires that "[p]ublic notice of the elections shall be given at least sixty days prior to such elections."

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You have asked from what date the thirty-to-ninety day period is to be calculated.

Section 7-11-85 of the Code provides the procedures to be followed by a county board of registration in verifying the signatures on a petition such as one presented to a city council under Section 5-15-30; the exact procedure applicable in a given instance depends upon the number of signatures required on the petition. Upon completion of the verification process, the county board of registration is directed to complete a summary form and forward said form to the requesting authority (here, a city council). Neither Section 7-11-85 nor Section 5-15-30 specify a time frame in which the board of registration is to complete the verification process.

By way of contrast, the procedure for making similar changes in the form of government, method of election, or number of members of a county council, in Section 4-9-10(c) of the Code, provides in relevant part:

Petitions shall be certified as valid or rejected by the county board of registration within sixty days after they have been delivered to the board and, if certified, shall be filed with the governing body which shall provide for a referendum not more than ninety days thereafter. ...

Because Section 5-13-30 requires the calling of a special election within certain time limitations dating from the date of "council action or receipt of the petition and publication of the notice of election," it must be assumed that, in case of a petition, the date of reference is that date when the petition is received from the petitioners rather than the date of receipt of the results of the verification process. Unlike Section 4-9-10(c), which specifically refers to the verification process, Section 5-13-30 mentions only receipt of the petition. Thus, the date of receipt of a petition by a city council under Section 5-15-30 would be the critical, determinative date, rather than the date of receipt of verification results. 2/

2/ Of course, if the requisite number of valid signatures is not met, the election would not be held.

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It must also be noted that Section 5-13-50 requires sixty days' notice to be given prior to an election. Furthermore, the changes contemplated by a petition under Section 5-13-30 are among those for which preclearance would be required under the Voting Rights Act of 1965, as amended; sixty days is usually allotted for response to a submission made pursuant to the Voting Rights Act. In construing Section 4-9-10(c), supra, this Office has suggested that

a county council act upon the receipt of the petition within ninety days rather than schedule the referendum within the ninety days. When the Home Rule Act was passed, South Carolina and its political subdivisions...were already subject to the requirements of the Voting Rights Act of 1965, as amended. Any of the changes contemplated by Section 4-9-10(c) would require preclearance from the United States Department of Justice, as well as preclearing the date of the referendum. The Department of Justice must respond within sixty days when submission is made to the United States Attorney General for his statement of no objection; further, the sixty days may be tolled at any time if the Department of Justice requests additional information. By interpreting the language of Section 4-9-10(c) as requiring council to act within ninety days, the requirement of preclearance could be accommodated.

Op. Atty. Gen. dated December 17, 1985. In acting within the thirty-to-ninety day time frame of Section 5-13-30, a city council must also be mindful of these additional requirements when setting the date for the referendum upon receipt of a petition under Section 5-15-30 of the Code.

We trust that the foregoing has satisfactorily responded to your inquiry. If we may provide additional assistance or clarification, please advise.

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With kindest regards, I am

Sincerely,

Patricia D. Petway

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REVIEWED AND APPROVED BY:

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