

The State of South Carolina



Opinion No 88-3

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Office of the Attorney General

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April 25, 1988

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

Dear Senator Fielding:

By your letter of April 7, 1988, you have inquired as to what procedures should be followed by a county following a successful referendum to change the form of county government and number of council members, with respect to old members, members elected at the same election in which the referendum is successful, and vacancies (new positions) created by the successful referendum.

Section 4-9-10(e), Code of Laws of South Carolina (1976, as revised), provides the following:

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... and until their successors are elected... and have qualified.

In addition, Section 3 of Act No. 283, 1975 Acts and Joint Resolutions, provides:

After one of the forms of county government... has been adopted and becomes effective, to insure an orderly transition from existing forms of government, the following procedures shall be initiated and carried out by each county council:

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(1) Provide by ordinance for the composition and election of a new county council pursuant to Code Sections [4-9-10 and 4-9-90].

* * *

(3) Take all other necessary actions to implement the form of government adopted and the transition to that form including but not limited to:

(a) a schedule for the election of council members... based on the expiration of terms of persons serving unexpired terms when a new form of government becomes effective. Composition of councils need not conform to the numerical requirements prescribed for the form adopted until such unexpired terms are completed.

* * *

Based on the foregoing, it is the advice of this Office that 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 State Department of Justice to be approved under the Voting Rights Act of 1965, as amended, prior to their becoming effective. NAACP v. Hampton County Election Commission, 470 U.S. 166, 105 S.Ct. 1128, 84 L.Ed.2d 124 (1985).

Assuming that the referendum is successful and approval of the changes is received from the United States Department of Justice, we would advise that the incumbent council members, not subject to re-election in the election during which the referendum was held, would continue to serve until their respective terms expire. Council members elected in the election during which the referendum was held would serve until the expiration of their respective terms. If additional positions on county council should be authorized by the referendum, these additional positions would be filled by holding a special election.

This type of situation has arisen in other counties in their changes to different forms of government. Enclosed are opinions of this Office dated July 26, 1976 as to Greenville County and October 3, 1975 as to Pickens County, to give you some idea of how the situation was handled in those counties.

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We trust that the foregoing has adequately responded to your inquiries. Please let us know if we may provide anything further.

Sincerely,

Patricia D. Petway

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Assistant Attorney General

PDP:sds

Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

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