

The State of South Carolina



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March 31, 1988

The Honorable Marion P. Carnell
Member, House of Representatives
518-C Blatt Building
Columbia, South Carolina 29211

Dear Representative Carnell:

You have advised that Greenwood County recently adopted the council-manager form of government and that the present county council, whose members' terms expire in late 1988, operates under the council form of government. The County Auditor and County Treasurer, whose terms expire on July 1, 1989, are both presently elected. You have asked whether the present county council has the authority to make these offices appointed rather than elected, or instead whether this would be the responsibility of the new county council operating under the council-manager form of government.

Section 4-9-60, Code of Laws of South Carolina (1976), provides in relevant part that "[u]nder the council-manager form [of government] the county treasurer and county auditor shall serve out their unexpired terms but shall thereafter be elected or appointed as council shall by ordinance prescribe." Similarly, Section 4-9-860 of the Code provides:

The county treasurer and county auditor, or their counterparts, by whatever terms those officials are designated may be elected or appointed by council as the council may determine by ordinance. If such officials are appointed, they shall be subject to control by council and the manager in the same manner as other appointed county department heads.

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Neither of these statutes address the issue which you have raised. Under Section 4-9-60 of the Code, however, it is certain that the County Treasurer and County Auditor are entitled to serve until the ends of their respective terms.

In adopting an act, ordinance, or rule, a legislative body acts in a legislative capacity. However, such act, ordinance, or rule, once adopted, is not necessarily binding upon future legislative bodies, which bodies are free to amend or modify previous actions taken. See Manigault v. Springs, 199 U.S. 473, 50 L.Ed. 274 (1905); 67 C.J.S. Parliamentary Law §§ 2, 4, 8; 73 Am.Jur.2d Statutes § 34; Ops. Atty. Gen. dated April 14, 1986; May 18, 1981; June 13, 1985; March 1, 1979; and October 9, 1985; and resources cited therein. The only constraints would be those imposed by the statutes or Constitution of the State of South Carolina, none of which appear to be present in this instance.

Neither the present nor the future county councils are precluded from adopting an ordinance which would require the offices of County Treasurer and County Auditor to be appointed rather than elected; if the present county council wished to make these offices appointed following the advent of the council-manager form of government, such would be permissible. However, nothing would preclude the incoming county council under the council-manager form from reversing the actions previously taken.

Changing an office from elected to appointed or vice versa is a change which must be approved under the Voting Rights Act of 1965, as amended. See 28 C.F.R. § 51.13. In changing from elected to appointed method of selection, further consideration should be given to the lengthy preclearance process and the time required thereunder vis-a-vis the filing and election processes.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

Robert D. Cook

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