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# The State of South Carolina

Opinion No. 7-8  
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## Office of the Attorney General

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November 3, 1987

B. Bayles Mack, Esquire  
Highway 160 West at I-77  
Fort Mill, South Carolina 29715

Dear Mr. Mack,

I am in receipt of your recent letter. You have stated that the Town Council of Fort Mill on October 12, 1987, adopted a resolution to have a vote on a referendum to change the form of government. This election was scheduled to be held on January 12, 1988, which is the date of Fort Mill's regularly scheduled town election. Your question is whether Section 7-13-355 of South Carolina Code of Laws, 1976, as amended, which was passed last year would control over the general provisions of the home rule legislation, and would prohibit this referendum election.

Section 7-13-355 provides that

[n]o question may be submitted to the qualified electors in a referendum held at the time of the general election unless the question is submitted to the appropriate election commission to be placed on the ballot no later than 12:00 noon on September first or, if September first falls on Sunday, not later than 12:00 noon on the following business day.

Section 5-5-20 of the Code as amended provides that a municipality may hold a referendum to change the form of government

... if a petition executed by fifteen percent of the qualified electors is presented...or if the municipal governing body shall by ordinance call for such an election,

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the municipal governing body shall conduct a special election not later than ninety days nor earlier than thirty days after the receipt of the certified petition or the passage of the council ordinance ....

In the context of the factual situation that you have presented, these two statutes would conflict on their face. However, it clearly appears that it could not have been the legislative intent to require municipalities, who often hold their regularly scheduled elections in months other than November, to only be able to hold a referendum if the question is presented by September first. 1/

The general law has been stated in 73 Am. Jur. 2d, Statutes §257 as follows

...with respect to a conflict arising between a statute dealing generally with a subject, and another dealing specifically with a certain phase of it, the specific legislation controls in a proper case.

In Section 369 it is stated that

[w]here there is one statute dealing with a subject in general and comprehensive terms, and another dealing with a part of the same subject in a more minute and definitive way, the two should be read together and harmonized, if possible, with a view of giving effect to a consistent legislative policy ....

See also, 82 CJS, Statutes, §§69, 347; Criterion Insurance Company v. Hoffman, 258 S.C. 282, 188 S.E.2d 459 (1972); Rhodes v. Smith, 273 S.C. 13, 254 S.E.2d 49 (1979).

In this situation the general law of 7-13-355 and the special provisions of 5-5-20 are inconsistent but they can be read together to require the special provision regarding home rule referendums to control these referendum dates and the general law to control situations not governed by special legislation. Therefore, if one applied the general law to this

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1/ Section 7-13-355 would apply to a January election in that a "general election" is defined by statute to be the regularly scheduled election for officers. See South Carolina Code of Laws, 1976, Section 7-1-20(1).

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question, the provisions of 5-5-20 which is a special law concerning home rule referendums would control over the general provisions established by 7-13-355.

Sincerely yours,



Treva G. Ashworth  
Senior Assistant Attorney General

TGA:ss

cc: David Williams, Esquire  
Legislative Council

REVIEWED AND APPROVED BY:



JOSEPH A. WILSON, II  
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