

The State of South Carolina



Office of the Attorney General

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The Honorable Caldwell T. Hinson
Senator, District No. 16
1115 Chesterfield Avenue
Lancaster, South Carolina 29720

Dear Senator Hinson:

You have asked for the opinion of this Office on the following two questions:

1. Can a county council legislate, create, or establish another (new) petition law which has not been specifically legislated by the General Assembly under the Home Rule Act, Title 4 of the Code of Laws of South Carolina (1976, as amended)?
2. Can a county council enact (adopt) county ordinances to amend existing petition laws which have been legislated and enacted by the General Assembly under the Home Rule Act?

By "petition laws," it is assumed that you are referring to laws of state-wide applicability within Title 4 which utilize petitions to bring a matter before a county council or other legislative body. We will respond to the second inquiry first.

A brief review of Title 4 reveals several general laws which involve presentment of petitions. The following list is meant to be representative, not exhaustive, as to the various types of petition laws:

1. §4-1-20 - petition to relocate county courthouse.
2. §4-5-120 - petition to change county boundaries.
3. §4-9-10(c) - petition to change form of county government, number of members of county councils, or method of election of county council members.

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4. §4-9-30(5) - petition procedures to establish special tax districts in counties.
5. §4-9-1210 - petition to propose county ordinance (except ordinance appropriating money or authorizing the levy of taxes).
6. §4-9-1220 - petition to repeal certain ordinances concerning debt repayment.

These general laws are applicable to all counties within the State of South Carolina. Your second question is whether a county council is authorized to adopt an ordinance which would, in effect, amend these generally applicable laws.

Section 4-9-30 of the Code grants various powers to be exercised by county councils "within the authority granted by the Constitution and subject to the general law of this State" A county council is obligated to follow general laws and lacks authority to amend general laws of this State. Thus, an ordinance adopted by a county council which is repugnant to or inconsistent with the Constitution or general laws of this State would be considered void. Cf., Central Realty Corp. v. Allison, 218 S.C. 435, 63 S.E.2d 153 (1951); Law v. City of Spartanburg, 148 S.C. 229, 146 S.E. 12 (1928); Op. Atty. Gen. No. 4093, dated August 22, 1975; Op. Atty. Gen. dated October 9, 1986. In response to your second question, then, a county council is not authorized to adopt an ordinance which would vary general laws or the Constitution of this State.

It is our understanding that the first question has arisen in the context of a county council adopting an ordinance in which the procedure of naming all streets and roads in that county was established. A review of the ordinance shows that citizens who lived on a particular road were permitted to submit an application for the naming of the road to the county tax assessor, who then approved the name and entered it in the index of street names. Other than adopting the original ordinance, the county council has had no further role in naming the streets of the county.

Presently pending before the county council is an amendment which would permit the county council to change the name of a street upon the filing of a petition with the county supervisor. The petition must be signed by seventy-five percent (75%) of the real property owners on the street or road. The first question thus becomes: whether the required signatures of seventy-five percent of real property owners becomes a new petition law not specifically permitted by the General Assembly.

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The action to be taken by the county council appears to be ministerial upon receipt by the county supervisor of a proper petition to change the name of a street. Since no ordinance is proposed to be adopted, this act falls outside Section 4-9-1210 of the Code, which requires that fifteen percent of the county's qualified electors petition for the proposal of an ordinance. Too, while state law provides mechanisms for the naming or changing of names in a municipality, see Sections 5-23-690, 5-23-700, and 5-27-180 of the Code, apparently state law is silent as to procedures to be followed, except for Section 5-27-180, within a county. Because a county has jurisdiction over roadways, see Sections 4-27-180 and -190 for examples, naming roadways would seem to follow implicitly. Cf., Lomax v. Greenville, 225 S.C. 289, 82 S.E.2d 191 (1954). As long as no state law or constitutional provision is being contravened, there appears to be no prohibition against a county council establishing a ministerial procedure to name or rename the roadways of the county.

Therefore, in response to your first question, it appears that the county council is not adopting a new "petition law" but is instead providing a mechanism to handle in a ministerial manner a matter over which it implicitly has jurisdiction. Because the situation is as described, rather than the actual creation of a new "petition law," this Office deems it unnecessary to consider the first question in more detail.

We trust that the foregoing discussion will provide you with the necessary guidance. With kindest regards, I am

Sincerely,

Patricia D. Petway

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Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

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