

1983 WL 181891 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 20, 1983

*1 William H. Seals, Esquire
Marion County Attorney
Post Office Box 1041
Marion, South Carolina 29571-1041

Dear Bill:

I am in receipt of your letter in which you informed me that the United States Department of Justice has withdrawn their objection to Marion County's Reapportionment Plan and will now not object to the plan. You have raised various questions regarding the election that should now be held.

You have stated that three council members' terms expired on December 31, 1982, and that they stood for re-election in the June, 1982, primary. Two of the incumbents were nominated without opposition, the third was defeated in primary. Further, two members whose terms expired in December of 1984 resigned. Plans were made to hold a special primary on August 31st to fill these positions. The books were opened for candidates to file and then the books were closed. After the date the books were closed, on August 16th, the Justice Department made its initial objection to your plan which has just been withdrawn. The result of this objection was to stop the special primary and to prevent the council from being elected in the November, 1982, General Election. The remaining five members of the council have been holding over. You have now raised the following questions.

1. What is the status of the three (3) nominees of the 1982 June Primary which was held under the New Plan which was subsequently disapproved on August 16, 1982, and now approved by letter forthcoming in the next few days?

These persons would be the nominees for the upcoming election. Only the date of the General Election has changed.

2. Assuming that the three (3) persons mentioned in question #1 above constitute the valid nominees of the Democratic Party, I assume that a General Election would now have to be held and provisions made for the normal write-in candidates and for the nominees of any other Party.

Yes.

3. If the three (3) persons mentioned in questions #1 and #2 above are not legally nominated, will they have to run over in a Special Election?

See answer to first question above.

4. Will the books have to be reopened for new filings by the persons interested in running for the two (2) seats representing the unexpired terms of those two (2) members resigned, or will we simply proceed forward with a Special Election for those persons who filed before the books closed for the Special Election?

There is nothing in the statutes that govern this situation. This Office has previously advised in similar situations that since the books were opened and closed prior to your notification from the Justice Department that they would object to the plan, persons who were interested in filing for office had the opportunity to file at that time. Assuming filing was properly conducted it would not now have to be reopened. However, as I told you on the phone the other day, this precise question is now before

the Court in NAACP v. Hampton County Election Commission. Therefore, until the Court rules, I am unable to give you a more specific or definitive answer to your question.

*2 5. Do we still operate County Government in a 'hold-over' capacity until the General Election is held, determining the new members?

Yes. See in general, Bradford v. Byrnes, 221 S.C. 255 (1952); Langford v. Board of Fisheries, 217 S.C. 118 (1950); Smith v. City Council of Charleston, 198 S.C. 313 (1941); Heyward v. Long, 178 S.C. 351 (1935); 63 Am. Jur. 2d Public Officers §§ 158, 150; 67 C.J.S. Officers § 71.

Sincerely,

Treva G. Ashworth
Senior Assistant Attorney General

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