

1982 WL 189406 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 27, 1982

\*1 Deborah C. Westbrook, Esquire  
Assistant County Attorney  
14-A Courthouse Annex  
Greenville, South Carolina 29601

Dear Ms. Westbrook:

You have asked the opinion of this Office on three questions concerning an upcoming referendum on whether Greenville County Ordinance 925 authorizing the issuance of general obligation bonds by the Greenville Memorial Auditorium District should be repealed. The questions posed are:

1. May one ballot contain wording for both a mandatory and an advisory referendum?
2. May the advisory referendum state that only if a voter has voted in favor of sustaining Ordinance 925 that he may then vote his preference for the site of the coliseum?
3. May Ordinance 925 be amended as to the site location of the coliseum before or after the referendum?

My understanding of circumstances recited by you are that in Ordinance 925 [copy attached] the Greenville County Council authorized the Greenville Memorial Auditorium District to issue general obligation bonds 'for the purpose of providing a portion of the funds to construct and equip a coliseum on lands which have already been acquired by the District adjacent to the present Auditorium.' Thereafter, a mandatory referendum on the repeal of the ordinance was made necessary by the filing of a petition pursuant to [Section 4-9-1220, Code of Laws of South Carolina](#), 1976, as amended. The stated purpose of the petition [copy attached] was 'to repeal the ordinance authorizing the Greenville Memorial Auditorium District to issue general obligation bonds to the extent not exceeding \$18,000,000.' By resolution, the Greenville County Council then chose to conduct an advisory referendum, pursuant to Section 4-9-30(16), as amended, on the same date as the mandatory referendum, to obtain the preference of the voters on the location of the coliseum.

1. Concerning the use of a single ballot for both the advisory and mandatory referendum, and assuming the questions are properly stated and separated, no prohibition against this has been found in Sections 4-9-1210 to 1230 dealing with petitions and referenda, in Section 7-13-400 on the form of the ballot for questions, or in the general law. Section 7-13-1730, although it may not be directly applicable to this question, provides that nothing in Article 13 on the use of voting machines shall be construed as prohibiting the use of a separate 'ballot' for constitutional amendments and other questions. This section suggests that the use of a single ballot for multiple questions is contemplated. Nevertheless, where feasible, the better practice for presenting the questions to the voters may be to place separate questions on separate ballots.

2. From the second question posed by you, I understand that the advisory referendum on the location of the proposed coliseum may be restricted to those voters who vote against repealing Ordinance 925. Restricting access to that referendum in the manner described raises serious issues with respect to the equal protection clauses in the Fourteenth Amendment to the United States Constitution and Article I, Section 3 of the South Carolina Constitution. As was stated in [Hayward v. Clay](#), 573 F.2d 187, 189 (4th Cir. 1978), a case arising from a City of Charleston annexation election,

\*2 as long as the election in question is not one of special interest, any classification restricting the franchise on grounds other than residence, age and citizenship cannot stand unless the district or State can demonstrate that the classification serves a compelling [governmental] interest. [quoting [Hill v. Stone](#), 421 U.S. 289, 287 (1975)]

The restriction on the access of voters to the advisory referendum described above should not be undertaken unless a compelling governmental interest for the restriction can be demonstrated. No such interest has been identified by you, nor has one been discerned by this Office.

3. Your third question concerns whether the Greenville County Council may amend Ordinance 925 to delete the site location identified therein before or after the referendum required by Section 4-9-1230. The more basic question is whether it can amend at any time an ordinance that has been the subject of a referendum required by Section 4-9-1230. In the limited time permitted us by your need for an opinion by this date, our research has not revealed any decision by the South Carolina Supreme Court on this point. There are case decisions from other jurisdictions which hold that an initiated ordinance, which is different from a referendum on the repeal of an ordinance such as here, can be amended or repealed; there are also some decisions from other jurisdictions to the contrary. 42 Am.Jur.2d., Initiative and Referendum, Sections 58, 59, 60, 61.

The specific question that will be presented to the voters pursuant to [Sections 4-9-1220](#) and 1230 is whether Ordinance 925 should be repealed by the County Council. It should be noted that [Section 4-9-1220](#) limits the repeal of ordinances by referenda to those authorizing the issuance of bonds, notes, and other debts requiring the pledge of the full faith and credit of a county. This should be distinguished from an ordinance proposed by petition and required by a referendum to be adopted by a county council. See [Sections 4-9-1210](#) and 1230. Assuming that Ordinance 925 is not required to be repealed by the results of the referendum, [Sections 4-9-1220](#) and 1230 do not appear to prohibit the subsequent amendment of the ordinance, at least where the amendment does not increase the amount of the bond issue or alter the method of repayment. The aforementioned authority permitting the amendment of initiated ordinances supports this view.

The proposed amendment to Ordinance 925 prior to the referendum may require different considerations and treatment. At the time the petition was filed, the voters who had signed it may have done so with knowledge that the coliseum would be constructed adjacent to the present auditorium. Ordinance 925, Section 3. If the site location had been different, this may have affected their decision to sign the petition. Such an amendment also might confuse the voters' understanding of the ordinance and their vote on the question of repealing it. Furthermore, there are case decisions in other jurisdictions which hold that ordinances cannot be amended pending referendum proceedings against them. 42 Am.Jur., [supra](#), Section 57.

\*3 Because of the time constraints placed upon this Office and the difficulty of the question, and because this Office usually requires written opinions, including supporting authority, from attorneys from local governmental entities requesting opinions, we are unable to provide at this time an opinion on the third question posed by you. The foregoing comments on this question are offered as assistance to you and the Council, but do not constitute the opinions of this Office.

To summarize, as to the first two questions, it is the opinion of this Office that two referenda or questions, where properly stated and separated, may be placed on a single ballot and that the voters allowed to vote on the advisory referendum on the site location for the coliseum should not be restricted to those voters who vote against repealing Ordinance 925, unless a compelling governmental reason for such a restriction can be demonstrated.

Sincerely,

James M. Holly  
Assistant Attorney General

1982 WL 189406 (S.C.A.G.)