

1977 S.C. Op. Atty. Gen. 80 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-88, 1977 WL 24430

Office of the Attorney General

State of South Carolina

Opinion No. 77-88

March 23, 1977

*1 Andrew F. Hodges, Esquire
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Charleston, South Carolina 29401

Dear Drew:

You have requested opinions from this Office on various aspects of Act No. 283 of 1975, the 'home rule' legislation, and I shall respond to them in the order posed.

1. In my opinion, the three days' notice requirement imposed by Section 14-1166 of the Code for a special Charleston County Council (Council) meeting has been impliedly repealed by the twenty-four hours' notice of a special county council meeting required by Section 14-3708 of the Code (Cum. Supp.).

2. In my opinion, any non-emergency ordinance (including one which levies a tax) can receive a valid reading at a properly noticed special Council meeting, assuming that a quorum is present and that the public hearing requirements imposed by Section 14-3710 of the Code (Cum. Supp.), if applicable, have been met. See, § 14-3709, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended (Cum. Supp.).

3. Section 14-3712 of the Code (Cum. Supp.) requires the Council to provide for an independent annual audit of all financial records and transactions of, inter alia, any agency funded in whole or in part by county funds; therefore, the fact that an agency funded even partially by Charleston County does not conduct an independent annual audit does not disqualify it from receiving county funds since the burden is upon Charleston County to provide for such an audit. Section 14-3712 appears to me to require the Council to pay for such an audit regardless of whether the agency in question conducts its own audit (although, perhaps, the agency's own audit could be adopted by the Council if conducted by accountants who meet the requirements imposed by Section 14-3712) and regardless of whether the agency in question does not ordinarily conduct its own audit but would if the County paid for it and/or if it could not otherwise receive county funds.

4. In my opinion, the Council most probably can enact a rule prohibiting a contract with the County in which a Council member has a substantial financial interest even though Section 14-3715 of the Code (Cum. Supp.) requires only that the interested Council member make his interest known and refrain from voting. See, e.g., 6 McQUILLIN MUNICIPAL CORPORATIONS § 21.35 (3rd Ed. 1969).

5. I think that the advertisement and bid requirements of Section 14-1196 of the Code most probably are carried forward by the following language of Section 14-3717 of the Code (Cum. Supp.) at least until January 1, 1980:

All operations, . . . of county government, . . . and laws related thereto in effect on the date the change in form becomes effective shall remain in full force and effect . . . until repealed by the General Assembly, or until January 1, 1980, whichever time is sooner, . . .

As far as the effect of recent home rule decisions on the continuing validity of the provisions of Section 14-1116, a certain amount of latitude vis a vis special legislation during the transition period appears to have been approved by the South Carolina

Supreme Court. See, e.g., [Duncan v. The County of York et al.](#), 267 S.C. 327, 228 S.E.2d 92 (1976). The holding in [Thorne v. Seabrook](#), 264 S.C. 503, 216 S.E.2d 177 (1975), does not appear to have necessarily effected an invalidation of the provisions of Section 14–1196 since the special statute in [Thorne](#) was contrary to an already enacted general law whereas there is no general law either requiring or prohibiting advertisement and bidding vis a vis county contracts.

*2 6. In my opinion, Section 14–3709 of the Code (Cum. Supp.) has impliedly repealed the five-day publication requirement of Section 14–1168 of the Code since Section 14–3709 imposes no publication requirement. The Council, however, would be free to enact an ordinance requiring publication if it desired.

7. Under Section 14–3708 of the Code (Cum. Supp.), I think that the Council is free to select its chairman as it chooses, including using a method by which advisory referendum results are followed.

8. The Council most probably can provide for a method of voting by proxy except when an emergency ordinance is enacted since such an ordinance requires the affirmative vote of at least two thirds of the council present. See, § 14–3710, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended (Cum. Supp.)

9. In response to your inquiry about Sections 53–72 and 15–1095.5 of the Code (Cum. Supp.), I am enclosing a copy of an order of the United States District Court construing Section 53–71 of the Code. Let me know your opinion of the effect of that decision on the questions you have raised.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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