

1976 WL 30713 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 15, 1976

*1 Darrell Thomas Johnson, Jr., Esquire
Town Attorney
Hardeeville, South Carolina 29927

Dear Mr. Johnson:

You have requested an opinion from this Office as to the following question:

Do the new powers vested in a municipality by the 'home rule' bill become effective as of the date of the reissuance of its charter by the Secretary of State, or do such powers become effective at the end of the fiscal year in which such reissuance occurs?

Section 6 of Part II of Act No. 283 of 1975, the 'home rule' legislation, provides in part:

The form adopted shall become effective at the beginning of the fiscal year following adoption.

The adoption of one of the three alternate forms of municipal government is complete upon the filing of an ordinance adopting one of the three forms with the Secretary of State and his issuance of an appropriate certificate of incorporation to the municipality. See, 59 STAT. Act No. 283 § 47-28 at 721 (1975).

Based on the aforementioned provisions, I concur with your opinion that the new powers vested in a municipality by the provisions of Act No. 283 of 1975 become effective at the beginning of the fiscal year following the adoption of one of the forms. Our Office has consistently taken the position, however, that, apart from the selection of a form of government, the provisions of Act No. 283 cannot be validly implemented by any municipality until the United States Justice Department, acting pursuant to Section 5 of the 1965 Voting Rights Act, approves the new form selected by that municipality.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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