

1976 WL 30463 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 11, 1976

*1 Mr. Joseph S. Mendelsohn
Charleston Commissioners of Election
P. O. Box 633
Charleston, South Carolina 29402

Dear Mr. Mendelsohn:

You have requested an opinion from this Office as to whether or not a referendum conducted pursuant to Section 14-3701(a) of Act No. 283 of 1975, the 'home rule' legislation, can be scheduled in Charleston County for June 29, 1976, so that a run-off, if required, would be held after July 1, 1976. In my opinion, it cannot.

Section 14-3701(a) of Act No. 283 provides in part:

. . . unless one form [of the five alternate forms of county government] receives a majority favorable vote in the initial referendum, a second or run-off referendum shall be held two weeks after the first referendum at which time the two forms which received the highest number of votes shall again be submitted to the qualified electors for final selection of the form to be adopted. . . . [Emphasis added.]

Section 14-3701(b) begins:

Notwithstanding any other provisions of this chapter, unless otherwise determined by referendum prior to July 1, 1976, the county concerned shall, beginning on that date, have the form of government [Emphasis added.]

If the initial referendum in Charleston County is conducted on June 29, 1976, and if no form receives a majority favorable vote, then there will have been no determination prior to July 1, 1976, and, arguably, the provisions of Section 14-3701(b) will take effect. In any event, there is no provision in Act No. 283 that I can find that would authorize the holding of a second or run-off referendum after July 1, 1976, since the only specific deadline requires a determination, if made by means of a referendum, to be made prior to July 1, 1976.

You mentioned in your letter that the Commissioners are acting pursuant to § 23-400.15, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended, insofar as the requirement of forty-five days for the certification of a petition is concerned. I do not believe that the certification of a petition to conduct a 'home rule' referendum is necessarily controlled by the time provisions of § 23-400.15 [cf., § 47-24 of Act No. 283 specifying that municipal elections and referenda are to be conducted ' . . . in accordance with the provisions of general law regulating special elections as they apply to referendums in this State, mutatis mutandi'] and that the certification should be completed as quickly as possible.

With kindest personal regards,

Karen LeCraft Henderson
Assistant Attorney General

1976 WL 30463 (S.C.A.G.)