

1976 S.C. Op. Atty. Gen. 216 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4381, 1976 WL 23000

Office of the Attorney General

State of South Carolina

Opinion No. 4381

June 30, 1976

**\*1 RE: Act No. 283 of 1975, § 14-3701**

Roy McBee Smith, Esquire  
County Attorney  
Post Office Box 5306  
Spartanburg, SC 29301

Dear Mr. Smith:

You state that no referendum has been held in Spartanburg County to select a form of government and that, therefore, on July 1, 1976, the County shall by operation of law fall within Form 3, Council Administrator form.

(1) You inquire whether the Spartanburg County governing body can call for a referendum to change the form and composition of County government in the November 1976 General Election, which new form, if approved, would become effective on July 1, 1978.

Sections 14-3701(a) and (b) relate to the initial selection and adoption of one of the alternate forms of government provided by the Act. Section 14-3701(c) sets forth the manner in which the initial form can be changed as a result of a referendum. That section provides in part as follows:

After the initial form, number and composition has been adopted and selected, the adopted form, number and composition shall not be changed for a period of two years from the date such form becomes effective and then only as a result of a referendum as hereinafter provided for . . . After a referendum has been held and whether or not a change in the form results therefrom, no additional referendum shall be held for a period of four years.

The above quoted language from § 14-3701(c) refers to two referendums after the initial selection. The Act clearly provides that a second referendum cannot be held until four years after the first referendum. In contrast, there is no such express statutory limitation as to the timing of the first § 14-3701(c) referendum. Section 14-3701(c) does, however, state that the result of the first referendum referred to therein cannot be effectuated until two years after the initial adoption and selection is made pursuant to § 14-3701(a) or (b).

While the matter is not free from doubt, the absence of a clear restriction in § 14-3701(c) as to the timing of a first referendum provided for therein leads me to the opinion that Spartanburg County Council is not prohibited from holding such a referendum in the November 1976 General Election, with the change, if any, to take effect on July 1, 1978.

(2) You also inquire whether in such a § 14-3701(c) referendum the governing body must propose all the alternate forms provided by the Act.

In contrast to § 14-3701(a), which authorizes a referendum to determine a county's initial form under home rule, § 14-3701(c) does not specifically require that all alternate forms appears on the ballot.

Section 14-3701(c) also provides that no change to an alternate form as a result of a referendum shall become effective unless such proposed form receives a majority vote; but in contrast to § 14-3701(a), there is no provision authorizing a run-off. There is, therefore, an implied requirement that the majority vote be attained without run-off, together with the absence of any express requirement that all forms appear on the ballot. This leads me to the opinion that the Act does not require all alternate forms to appear on the ballot for a § 14-3701(c) referendum, but requires only that the voters have a choice between the form then in effect and one or more alternative forms.

\*2 Additionally, § 14-3701(c), in contrast to § 14-3701(a), states that if more than one petition is filed within the time allowed, the petition with the largest number of signatures shall be the one voted on. It can be argued that this provision contemplates the possibility that several petitions will be filed, each proposing a change to a different one of the several alternate forms. As in the question discussed in paragraph 1 herein, the issue is certainly not free from doubt, but it is my opinion that the Act does not require all forms to be proposed.

Very truly yours,

Edward E. Poliakoff  
Assistant Attorney General

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