

1976 WL 30497 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 26, 1976

*1 Mark C. Tanenbaum, Esquire
Attorney at Law
P. O. Box 659
Charleston, South Carolina 29402

Dear Mr. Tanenbaum:

You have requested an opinion from this Office as to whether the members of the governing body of the municipality of Sullivan's Island presently serve four year staggered terms or two year terms. In my opinion, they serve four year staggered terms.

The question that first arises is that Sullivan's Island initially incorporated pursuant to Chapter 4 of Title 47 of the 1962 South Carolina Code of Laws; Section 47-311 provides that aldermen who serve on the town council hold office for two years. It would thus appear that the two-year mandate of Section 47-311 governs the council members or aldermen of Sullivan's Island. On the other hand, the Uniform Municipal Election Law [§§ 47-57.11 *et seq.*, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended (Cum. Supp.)] provides that the terms of office for the mayor and councilmen of an adopting municipality are for four years and are staggered. In addition, our State Supreme Court has recently held that the provisions of the UMEL supersede contrary provisions of Title 47 enacted prior to 1970. [Garey v. City of Myrtle Beach](#), 263 S.C. 247, 209 S.E.2d 893 (1974). Inasmuch as Chapter 4 of Title 47 was enacted prior to 1970 [see, 1896 STAT. AT LARGE 67, as amended], the provisions of the UMEL which specify four year staggered terms will impliedly repeal the two-year provisions of Section 47-311 vis á vis a municipality which has incorporated under Chapter 4 but has adopted the UMEL. See also, [Ward v. Cobb](#), 204 S.C. 275, 28 S.E.2d 850 (1943).

The controlling question then becomes whether the Sullivan's Island Town Council, by adopting the ordinances of the Sullivan's Island Board of Township Commissioners, effectively adopted the UMEL, the Board of Township Commissioners having previously adopted the UMEL by ordinance. As early as 1929, our Office was of the opinion that the Sullivan's Island Township was a self-government comparable to a municipality. 1929 OPS.ATTY.GEN. No. 267. In [Folsom v. Township Ninety-Six](#), 159 U.S. 611, 40 L.Ed. 278, 16 S.Ct. 174 (1895), which arose out of South Carolina, the United States Supreme Court stated that the legislature may declare a township to be a corporation and confer upon it appropriate corporate powers. Other jurisdictions have given broad meaning to the term 'municipality,' finding that townships are generally subject to the laws applicable to municipal corporations and that townships are equal in powers and duties to a municipality. See, e.g., [Pierce Township v. Ernie](#), 19 N.W.2d 755; [Posey Township v. Senour](#), 86 N.E. 440; [Hanslovsky v. Township of Leland](#), 275 N.W. 720; [Goldberg v. Dorland](#), 28 A. 599; [Dolese v. Pierce](#), 16 N.E. 218. In [Hinnant v. South Carolina Highway Dep't.](#), 226 S.C. 10, 83 S.E.2d 209 (1954), the State Supreme Court distinguished the provisions of Section 47-70 of the South Carolina Code from cases in which the term 'municipality' has a broad meaning: *2 . . . [t]he terms and variations of it ['municipality'] sometimes have such broader meaning, [Gaud v. Walker](#), 214 S.C. 451, 53 S.E.2d 316, and authorities there cited, but not in this instance, . . . 226 S.C. at 13.

See also, § 47-8, CODE OF LAWS OF SOUTH CAROLINA, 1962; Act No. 1126 of 1974 [58 STAT. 2391 (1974)] ('. . . all township governments which have heretofore been established by act of the General Assembly . . . are entitled to exercise all the powers and privileges . . . provided for municipal corporations in this State').

If follows, therefore, that if the Board of Township Commissioners' adoption of the UMEL by ordinance was valid, as I believe it to have been, then the Town Council's adoption of all of the Board of Township Commissioners' ordinances resulted in its effective adoption of the UMEL, whose provision for four year staggered terms for mayor and councilmen prevails.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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