

1976 S.C. Op. Atty. Gen. 247 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4404, 1976 WL 23022

Office of the Attorney General

State of South Carolina

Opinion No. 4404

July 26, 1976

*1 Joseph H. Earle, Jr., Esquire
County Attorney
301 College Street
Greenville, South Carolina 29601

Dear Mr. Earle:

You have requested an opinion from this Office concerning 'home rule' matters and I shall respond to them in the order in which you have posed them.

1. Section 14-3701(a) of Act No. 283 of 1975, the 'home rule' legislation, provides that members of county governing bodies serving terms of office on the date a particular form of county government becomes effective will continue to serve the terms for which they were elected; Section 3(3)(a) of the Act provides that a schedule for the election of county council members is to be established 'based on the expiration of terms of persons serving unexpired terms when a new form of government becomes effective' and that the numerical composition of the county council need not conform to the requirements prescribed for the form adopted 'until such unexpired terms are completed.' Based upon these provisions, my opinion is that the three members of the Greenville County Council whose terms do not expire until 1978 will sit as members of the new Greenville County governing body until 1978.

2. Although the three hold-overs continue to serve until 1978 by virtue of the provisions of Act No. 283 of 1975, my opinion is that they will hold office only until the Tuesday following the general election of 1978 when their terms would have naturally expired according to the provisions of Section 3 of Act No. 573 of 1967 [55 STAT. 1084 (1967)]. The reason that I believe that the 'until their successors are elected or appointed and have qualified' language of Section 14-3701(e) of Act No. 283 does not apply, thereby continuing their terms until at least January 1, 1979, is that the three hold-overs will have no successors, *i.e.*, the full complement of twelve council members will be elected in the 1976 general election and the offices of the three hold-overs will cease with the expiration of their terms. See, § 3(3)(a) of Act No. 283 allowing numerical non-conformity on county councils 'until such unexpired terms are completed.'

3. Since Greenville County has selected the council-administrator form of government which specifies that council members' terms are to commence on 'the first of January next following their election' [§ 14-3740] and inasmuch as Section 14-3740 is a specific provision while Section 14-3706, which provides that terms of council members are to begin 'on the second of January next following their election,' is a general provision, I think that the specific provision controls [*see*, 2A SUTHERLAND STATUTORY CONSTRUCTION §§ 46.05 at 57 (4th Ed. 1973)] and that the five present council members whose terms expire in 1976 will continue to serve until January 1, 1977, when their successors' terms are to begin. *Cf.*, §§ 14-3770 and 14-3785.1 of Act No. 283. This conclusion is not inconsistent with the opinion expressed in paragraph 2 above inasmuch as the five present council members, unlike the three holdovers, will have successors in office.

*2 4. The Council will have eight members until January 1, 1977, when its number will increase to fifteen (15).

5. All twelve new council members should be elected from all twelve of the single member districts in the 1976 general election because Act No. 283 does not provide for a method by which fewer than all council members who are elected

from single member districts are to be elected initially and because that Act does expressly authorize numerical non-conformity until hold-overs' terms have expired. In my opinion, therefore, a new member should be elected from the single member election district in which two hold-overs happen to reside. The hold-overs from Greenville County's present governing body were elected by the county-wide electorate at large notwithstanding the fact that they must reside in one of several residency districts [55 STAT. Act No. 573, § 3 at 1084 (1967)]; therefore, they represent the county-wide electorate and not merely the voters residing in their respective residency districts. See generally, Dallas County v. Reese, 44 L.Ed.2d 132 (1975). On the other hand, the new members of the council will be elected by the voters of each single member election district only and, consequently, will represent only those voters; there will not be, then, during the transition period expressly provided for in Section 3(3)(a) of the Act, two people serving from one district at one time in violation of the one man one vote principle.

6. There can be fifteen (15) members of the Greenville County Council until the hold-overs' terms expire in 1978 by virtue of the provisions of Section 3(3)(a) of Act No. 283. Those fifteen will include twelve members elected from single member election districts in November, 1976, and three hold-over members from the present Greenville County Council.

7. I believe that the term of the resigned member of the present Greenville County Council is not continued until 1978 by the provisions of Act No. 283 because the language of that Act makes clear, at least to me, the intent that present office holders, as opposed to present offices, hold over until the normal expiration date of their term. See, e.g., § 14-3701(e) ('[a]ll members of [present] governing bodies . . .'); § 3(3)(a) ('a schedule . . . based on the expiration of terms of persons serving unexpired terms . . .') [emphasis added].

These opinions make the assumption that Act No. 270 of 1975 is, in fact, constitutional; as you know, the validity of that very Act is presently being challenged in Greenville County and an act similar to it is also under attack before the State Supreme Court in its original jurisdiction.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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