



ALAN WILSON
ATTORNEY GENERAL

August 02, 2021

The Honorable John Richard C. King
Member
South Carolina House of Representatives
District No. 49
P.O. Box 11555
Rock Hill, SC 29731

Dear Representative King:

Attorney General Alan Wilson has referred your letter to the Opinions section. The letter states the following:

The question arose just recently as the City of Rock Hill is yet the center of a voting issue. Just recently, as last week, the City of Rock Hill notified the York County Registration & Elections Office of their temporary change to split City Council Ward Elections of Wards 4, 5 and 6, away from the Mayoral Election. Thus holding the mayor's election on schedule, October 19th, and delaying City Council elections and terms of Wards 4, 5 and 6, to next year in the spring at a to be determined date. City council terms are set to expire in November 2021.

We believe this violates the SC Municipal Code 5-15-50 and 5-15-40. It also violates the City of Rock Hill very own Municipal Code on Elections Sec. 14- 10, which states and I quote "The election of mayor and councilmembers for wards 4, 5, and 6 shall be held simultaneously." Citizens of District 49, which I represent, includes the City of Rock Hill, have taken issue with the change of the election schedule and the temporary change to the ordinance. This change will cause voter confusion, multiple elections to occur within a short period of time, and the additional cost to the taxpayers for no just reason. This is a very unusual change and the legality of splitting the election has come forth.

The question before you is can the City of Rock Hill arbitrarily split its General Election of Mayor and City Council Wards 4, 5 and 6 into two (2) parts and hold two (2) General Elections on separate dates.

Law/Analysis

It is this Office's opinion that the General Assembly authorized municipalities both to establish the dates of municipal elections and to change the dates of municipal elections. This Office has issued several opinions concluding a municipality may change the dates of its municipal elections, and, as a result, the terms of office impacted municipal officials would necessarily be shortened or extended. See Ops. S.C. Att'y Gen., 2009 WL 2844869 (August 4, 2009); 2007 WL 1934810 (June 1, 2007); 2006 WL 3199997 (October 10, 2006); 2006 WL 703687 (March 13, 2006); 2003 WL 21471512 (June 6, 2003). Yet, this power is not unlimited as we have cautioned "a municipality's use of this power must be reasonable" and the change "must be for a public purpose and not for the personal benefit of the council members and the mayor." Op. S.C. Att'y Gen., 2003 WL 21471512 (June 6, 2003). The circumstances described in the request letter are distinguishable from the opinions cited above in that (1) a specific date for the delayed election has not been set, but will, instead, occur after the redistricting of council wards 4, 5, and 6, and (2) the delay does not impact the mayoral election which will be held separately. See Rock Hill City Code § 14-7. For the reasons discussed below, it is this Office's opinion that a municipality is authorized to delay its municipal election until its council approves its redistricted wards if the council finds the use of this power is reasonable and for a public purpose. Further, if a municipality has adopted four-year terms for its mayor and councilmembers, it is this Office's opinion that such a municipality is authorized to hold mayoral elections separately from those of councilmembers.

As stated in the request letter, the City of Rock Hill delayed the date of the election for wards 4, 5, and 6 which would normally take place "on the third Tuesday in October" in 2021. Rock Hill City Code § 14-7. The Rock Hill City Code establishes the terms of the mayor and councilmembers as follows:

The mayor shall be elected to serve at large for a term of four years. Three councilmembers shall be elected, one each by the residents of each of three separate wards within the city, for four-year terms. Two years thereafter, three councilmembers shall be elected, one each by the residents of the other three separate wards. The election of mayor and councilmembers for wards 4, 5, 6 shall be held simultaneously. Two years after, the councilmembers for wards 1, 2 and 3 shall be elected. The elections shall alternate between each odd numbered year.

Rock Hill City Code § 14-10(a). However, on June 14, 2021, the City Council adopted Ordinance 2021-39 which is titled "an ordinance to amend Chapter 14, Elections, of the Code of the City of Rock Hill, only by postponing the 2021 city ward elections until after adoption of a new ward plan." The ordinance states that these elections will be postponed as a result of an announced delay from U.S. Census Bureau to the ordinary delivery of redistricting data. See Ordinance 2021-39, §§ 1-2. Ordinance 2021-39 provides the following explanation for postponing the election for wards 4, 5, and 6, but not postponing the mayoral election.

SECTION 10. That a delay in the election for Rock Hill Wards 4, 5, and 6 will serve to establish new ward lines that are constitutionally appropriate; give prospective candidates a reasonable time to ascertain the interests and needs of the ward constituencies; and give the electorate a chance to vote for the candidate that is most closely representative.

SECTION 11. That, as the election for mayor is "at-large," the redistricting of Rock Hill wards would have no effect on the mayoral election.

Ordinance 2021-39, §§ 10-11. Ordinance 2021-39 explicitly amends the election schedule set in Rock Hill City Code § 14-7 as follows:

SECTION 12. That Chapter 14, Elections, of the Code be and the same is hereby amended by adding, after the first sentence in Sec. 14-7, Time for general election, the following:

Provided, however, that the 2021 General Election for Council Wards 4, 5, and 6 shall not be held in October 2021, but shall instead be held, subject to the proviso below, on the first Tuesday following the passage of ninety days after the redistricted wards have been approved by City Council.

...

The terms of office for councilmembers elected in such postponed 2021 election shall end on the normal date for such terms, i.e., January 12, 2026.

Ordinance 2021-39, § 12 (emphasis added). The emphasized language reschedules the election date for council wards 4, 5, and 6, but does not set a specific date; instead, the ordinance sets the election for a fixed period of time after the city council approves the redistricted wards. Finally, the ordinance repeals all ordinances in the Rock Hill City Code which conflict with its terms.

SECTION 13. That all ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of inconsistency, but only as to the postponed 2021 election, and it is contemplated that every election thereafter shall be held in accordance with the Code as unaffected by this Ordinance.

Ordinance 2021-39, § 13. Thus, section 13 of Ordinance 2021-39 removes the apparent conflict with Rock Hill City Code § 14-10 by repealing the requirement that the election for the mayor and councilmembers of wards 4, 5, 6 must be held simultaneously.¹

The request letter also asks whether holding the election for wards 4, 5, and 6 separately from the election for mayor violates either S.C. Code §§ 5-15-40, -50. Section 5-15-40 reads:

The mayor and councilmen of each municipality shall be elected for terms of two or four years. Unless otherwise provided by ordinance, four-year terms shall be set so that not more than one-half of the council and mayor shall be elected in the same general election; provided, that in the first election after incorporation of a new municipality or adoption of a form of government pursuant to § 5-5-10, one-half of the councilmen may be elected for terms of two years and one-half of the councilmen and mayor may be elected for terms of four years if necessary to establish staggered terms. Two-year terms shall not be staggered.

S.C. Code Ann. § 5-15-40 (emphasis added). Section 5-15-50 reads:

Each municipal governing body may by ordinance establish municipal ward lines and the time for general and special elections within the municipality. Public notice of the elections shall be given at least sixty days prior to such elections.

S.C. Code Ann. § 5-15-50.

This Office's June 6, 2003 opinion addressed both statutes in the context of a municipality that sought to move its municipal elections to November to increase voter turnout. Op. S.C. Att'y Gen., 2003 WL 21471512 (June 6, 2003). The opinion explained the basis for finding municipalities are authorized to move the date of their elections even though the move will result in a change to the terms of elected officials.

The General Assembly, through the enactment of S.C. Code Ann. § 5-15-50, has given municipalities the authority to establish by ordinance the time for general and special elections within the municipality. A statute's words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1990). As Section 5-15-50 is not limited to the initial setting of election dates, it appears clear that the Section would authorize a municipality to change the date of its elections by ordinance. To interpret Section 5-15-50 otherwise would impose a limitation not provided for by the General Assembly.

¹ Op. S.C. Att'y Gen., 2005 WL 1024603, at 12 (April 14, 2005) (“As we previously recognized, “[i]n order for an ordinance to be properly amended or repealed, a new ordinance must be passed.””).

It is obvious that a municipality cannot exercise its authority to change the date of an election without also effecting the terms of some of the incumbent municipal officers. Article XVII, Section 11 of the South Carolina Constitution provides that

All officers, State, executive, legislative, judicial, circuit, district, County, township and municipal, who may be in office at the adoption of this Constitution, or who may be elected before the election of their successors as herein provided, *shall hold their respective offices until their terms have expired and until their successors are elected or appointed and qualified* as provided in this Constitution, unless sooner removed as may be provided by law; and shall receive the compensation now fixed by the Statute Laws in force at the adoption of this Constitution (emphasis added).

...

Accordingly, even though in this matter a council member's (or mayor's) set term may expire at the end of four years, he or she continues to legally hold office until his or her successor is elected and qualified. ...

Id. at 2-3.

Section 5-15-40 provides in part that “[t]he mayor and councilmen of each municipality shall be elected for terms of two or four years.” In Dunbar v. City of Spartanburg, 266 S.C. 113, 221 S.E.2d 848, 850 (1976), our Supreme Court stated that “[a] municipality being a creature of the legislature, may exercise only such authority as is granted to it.” Accordingly, as the General Assembly has provided only that mayors and municipal council members shall have terms of two or four years, a municipality would not be authorized to set by ordinance a term of office other than two or four years. Legislative action would be necessary to give the [municipality] the authority to change the terms of office of mayor and council members from four years to “4 years plus 14 months.” In reaching this conclusion, this Office is mindful that the authority of a municipality to change the date of elections has the possible effect of extending the terms of office of some incumbents beyond four years. However, there is a distinction between the natural consequences of an authorized act and an act which is unauthorized.

Id. at 4. Again, the use of such power must be reasonable and satisfy a public purpose. See Op. S.C. Att’y Gen., 2000 WL 655476 (March 9, 2000). Initially, the city council is tasked to make these determinations which are subject to review by the courts. See Caldwell v. McMillan, 224 S.C. 150, 158, 77 S.E.2d 798, 801 (1953) (“[T]he question of whether or not an act is for a public purpose is primarily one for determination by the legislative body rather than the Courts and the

Courts will not interfere unless it appears that the legislative body was clearly wrong.”). To determine whether municipality’s change of an election date is reasonable, a court would likely consider how long the impacted municipal officials’ terms are shortened or extended and the reasons for the change of date. See S.C. Att’y Gen., 2000 WL 655476, at 2 (March 9, 2000).

While our prior opinions have generally addressed extending municipal elections to a specific date, Ordinance 2021-39 is distinguishable in that it establishes the new election date for a fixed period of time, ninety days, after the city council approves the redistricted wards. Although the length of the extension to the impacted terms may be harder to ascertain,² the relevant determinations of reasonableness and public purpose still must be made by the Rock Hill City Council.

Finally, it is this Office’s opinion that, if a municipality has adopted four-year terms for its mayor and councilmembers, a municipality is authorized to hold mayoral elections separately from those of councilmembers. The South Carolina Supreme Court has not interpreted section 5-15-50 as a limit on municipal authority over its elections, but has instead found it allows “a municipality to hold its elections, primary or otherwise, whenever it wishes.” Denman v. City of Columbia, 387 S.C. 131, 135, 691 S.E.2d 465, 467 (2010). Therefore, a court would likely find holding the mayoral election separately from that of the council seats for wards 4, 5, and 6 does not present a conflict with section 5-15-50. Section 5-15-40, however, does impose a framework for municipal elections based on whether the mayor and councilmembers are elected to two-year or four-year terms. If the officials’ terms are set for two-years, section 5-15-40 states the terms cannot be staggered. Alternatively, if the officials’ terms are set for four-years, the statute states that the terms must be staggered “so that not more than one-half of the council and mayor shall be elected in the same general election.” Id. (emphasis added). The election schedule established in Rock Hill City Code § 14-10(a) clearly follows this framework. The amended election schedule in Ordinance 2021-39 also appears to be consistent in that separating these same elections for the mayor and wards 4, 5, and 6 would not encompass more than one-half of the council and mayor. It should be noted as well that section 5-15-40 contemplates municipalities may adopt an ordinance that sets a different election schedule than the statute describes. See S.C. Code § 5-15-40 (“Unless otherwise provided by ordinance ...”). Because the Rock Hill City Council established the subject municipal election schedule by ordinance and the ordinance does not include more than one-half

² Ordinarily, the Rock Hill City Code requires the oaths of office to be “administered at the first regularly scheduled meeting to be held in January of each even-numbered year.” Rock Hill City Code § 14-10(b). This Office was provided with a proposed ordinance that anticipates the U.S. Census Bureau will deliver redistricting data “on or about August 16, 2021.” As a result, the proposed ordinance sets the election for council wards 4, 5, and 6 for February 8, 2022 and the administration of oaths of office for “February 14, 2022, if there is no run-off election or February 28, 2022, in the event of a run-off election.” If the proposed ordinance is adopted, the terms of office would be extended approximately a month to a month and a half.

of the council and mayor in a single general election, a court would likely hold Ordinance 2021-39 does not violate section 5-15-40.

Conclusion

It is this Office's opinion that the General Assembly authorized municipalities both to establish the dates of municipal elections and to change the dates of municipal elections. This Office has issued several opinions concluding a municipality may change the dates of its municipal elections, and, as a result, the terms of office impacted municipal officials would necessarily be shortened or extended. See Ops. S.C. Att'y Gen., 2009 WL 2844869 (August 4, 2009); 2007 WL 1934810 (June 1, 2007); 2006 WL 3199997 (October 10, 2006); 2006 WL 703687 (March 13, 2006); 2003 WL 21471512 (June 6, 2003). Yet, this power is not unlimited as we have cautioned "a municipality's use of this power must be reasonable" and the change "must be for a public purpose and not for the personal benefit of the council members and the mayor." Op. S.C. Att'y Gen., 2003 WL 21471512 (June 6, 2003). The circumstances described in the request letter are distinguishable from the opinions cited above in that (1) a specific date for the delayed election has not been set, but will, instead, occur after the redistricting of council wards 4, 5, and 6, and (2) the delay does not impact the mayoral election which will be held separately. See Rock Hill City Code § 14-7. As is discussed more fully above, it is this Office's opinion that a municipality is authorized to delay its municipal election until its council approves its redistricted wards if the council finds the use of this power is reasonable and for a public purpose. Further, if a municipality has adopted four-year terms for its mayor and councilmembers, it is this Office's opinion that such a municipality is authorized to hold mayoral elections separately from those of councilmembers.

Sincerely,



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REVIEWED AND APPROVED BY:



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