



ALAN WILSON
ATTORNEY GENERAL

September 22, 2021

The Honorable William H. Bailey
Member
South Carolina House of Representatives
District No. 104
4487 Lake Circle
Little River, SC 29566

Dear Representative Bailey:

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

As you are aware, South Carolina Code Section 4-9- 10(c) appears to allow citizens to petition to change the method of electing its county council members and county council chairman:

SECTION 4-9-10. Referendum to determine form of county government; adoption of form of government selected; form of government when not otherwise determined by referendum; change in initial form; continuation of officials in office.

(c) After the initial form of government and the number and method of election of county council including the chairman has been adopted and selected, the adopted form, number, and method of election 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. Referendums may be called by the governing body or upon petition of not less than ten percent of the registered electors of the county. Petitions shall be certified as valid or rejected by the county board of registration within sixty days after they have been delivered to the board and, if certified, shall be filed with the governing body which shall provide for a referendum not more than ninety days thereafter. If more than one petition is filed within the time allowed for such filing, the petition bearing the

largest number of signatures of registered electors shall be the proposal presented, in the manner set forth hereinafter. Referendums shall be conducted by the county election commissioner and may be held in a general election or in a special election as determined by the governing body. No change to an alternate form of government, different number of council members, or method of election of council including the chairman as a result of a referendum shall become effective unless such proposed form receives a favorable vote of a majority of those persons voting in a referendum. In any referendum, the question voted upon, whether it be to change the form of government, number of council members, or methods of election, shall give the qualified electors an alternative to retain the existing form of government, number of council members, or method of election or change to one other designated form, number, or method of election. After a referendum has been held and whether or not a change in the form results therefrom, no additional referendums shall be held for a period of four years.

If the governing body of the county as initially or subsequently established pursuant to a referendum or otherwise shall be declared to be illegal and not in compliance with state and federal law by a court of competent jurisdiction, the General Assembly shall have the right to prescribe the form of government, the method of election, and the number and terms of council members but may submit to the qualified electors by referendum a question as to their wishes with respect to any element thereof which question shall include as an option the method of election in effect at the time of the referendum.

It is my understanding that a group of my constituents wishes to develop a petition for a county-wide referendum asking this question:

"Should the current single-member district method of electing members of the Horry County Council be changed to require that each of the eleven (11) members thereof be elected on an at-large basis and that each of those members be required to establish and maintain a legal residence in one of those eleven (11) single-member districts?"

YES

NO

As a result, I have a few legal questions about this code section- and petitions of this type- that your legal opinion will clarify for me.

First, what is the proper method for preparing a petition of this type?

Second, does a petition need to be in a particular form in order to constitute a legally valid filing?

Third, once a petition in a proper form has been signed by not less than ten percent of the registered electors of Horry County, where does it need to be filed?

Fourth, is this proposed referendum question as drafted in proper form for inclusion on the ballot?

Law/Analysis

This Office has previously issued opinions addressing S.C. Code § 4-9-10(c) and its requirements as to form, or lack thereof, for petitions seeking in a change in the form of government, number of council members, or methods of election. See Ops. S.C. Att’y Gen., (1987 WL 245489, at 2 (September 17, 1987) (“How the question or questions should be framed is not addressed by Section 4–9–10(c), however.”); 1980 WL 121098 (March 17, 1980) (“The provision is silent as to the requisites for a petition...”). We previously advised that such petitions “should contain the name, address and voter registration number of each petitioner so that the names can be easily certified by the board of voter registration.” Id. Once ten percent or more of the registered electors of the county have signed such a petition, it should be filed with the county board of voter registration and elections. S.C. Code § 4-9-10(c). The county board of voter registration and elections is tasked to certify such petition as valid or rejected within sixty days. Id. If the board certifies the petition as valid, the petition is then filed with the county council to “act upon the receipt of the petition within ninety days.” Op. S.C. Att’y Gen., 1985 WL 259240, at 3 (December 17, 1985).

Finally, the letter asks if the proposed referendum question is in the proper form to be included on the ballot. This Office has previously advised that “two alternatives be given on a ballot in a referendum being conducted pursuant to Section 4-9-10(c): retaining the present form of government, method of election, or number of council members, or changing to one designated form, number, or method of election.” Op. S.C. Att’y Gen., 1986 WL 289887 (November 10, 1986). The proposed question follows the suggested format by presenting the current method of election, council members are elected from single-member districts, and presenting an alternative method of election. However, as drafted, the alternative method of election states each member would be “elected on an at-large basis” and yet members would still be required “to establish and maintain a legal residence in one of those eleven (11) single-member districts.” It is unclear if this is a drafting error because the description of the method of election as “an at-large basis” is inconsistent with requiring a member’s residence to be within a single-member district. If the proposed question was intended to present the alternative method of election as an at-large basis, references to maintaining residence in single-member districts should be removed to avoid

confusion.¹ The proposed referendum question can also be read to suggest the method of election is intended to be a hybrid of both the single-member district and at-large methods. If this was the intent, this Office has not identified authority supporting such a hybrid method of election.

Conclusion

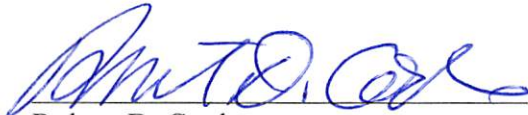
As discussed above, it is this Office's opinion that the proposed referendum question generally meets the form requirements in S.C. Code § 4-9-10(c). However, additional clarification may be necessary regarding what alternative to the current the method of election is intended.

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General

¹ We note that changing every seat on a county council to an at-large method of election could be subject to challenge under the federal Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.