

The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON  
ATTORNEY GENERAL

March 9, 2000

Roger P. Roy, Jr., Esquire  
North Myrtle Beach City Attorney  
1015 Second Avenue South  
North Myrtle Beach, South Carolina 29582

**RE: Informal Opinion**

Dear Mr. Roy:

Your opinion request has been forwarded to me for reply. You have asked for this Office's opinion on two questions. First, you ask whether moving a municipal election from a November election to a March election in the following year would violate state or federal law. Next, you ask whether the establishment of three-year terms for city council members and the mayor for the next two elections in order to achieve odd year elections in a five-year period would violate state or federal law.

In regards to your first question, this Office has previously concluded that a municipality has the authority to extend or shorten the terms of council members and the mayor. In an opinion dated July 11, 1980, we were asked whether it would be permissible for the City of Mauldin to extend the time of its elections to comply with a request by Greenville County that all elections in the county be held on a specific date. After reviewing Article VIII, Section 9 of the South Carolina Constitution, Section 5-15-50 of the South Carolina Code of Laws, and general law, we concluded that municipalities possess the power to extend the terms of office. Accordingly, we advised that the City of Mauldin could change the date of their municipal election in order to comply with the county's request.

In another opinion, dated November 30, 1989, we were asked whether the City of Beaufort may shorten the terms of incumbent council members by changing the date they assume office from the first Tuesday in July to the second Tuesday in May. Citing the July 11, 1980 opinion, we concluded that for the same reasons a municipality may extend terms.

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it may also shorten the terms. Therefore, we advised that the city had the general authority to make such a change.


Although a municipality may extend the terms of office of council members and the mayor, such power is not unlimited. First, a municipality's use of this power must be reasonable. See Weber v. Pryor, 531 S.W.2d 708 (1976); 63C Am.Jur.2d Public Officers and Employees § 141 (1997). I have been unable to locate any South Carolina cases discussing what might be a reasonable or unreasonable extension of a term of office. However, a court may look at factors such as the length of the extension and the reasons for the extension. It is likely a court would conclude that the extension must be for a public purpose and not for the personal benefit of the council members and the mayor.<sup>1</sup> Second, any changes to term length and the election date would require Justice Department preclearance before the changes could be implemented.

In regards to your second question, S.C. Code Ann. § 5-15-40 provides that the "mayor and councilmen of each municipality shall be elected for terms of two or four years." Thus, it would not appear that a municipality would have any authority to establish three-year terms for council members and the mayor.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With best personal regards, I am

Sincerely yours,



Paul M. Koch  
Assistant Attorney General

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<sup>1</sup> I note that such conduct may constitute a violation of the State Ethics Act. See S.C. Code Ann. § 8-13-700 (entitled "Use of official position or office for financial gain.")