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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

December 8, 2005

R. Allen Young, Esquire
Mount Pleasant Town Attorney
Post Office Box 745
Mount Pleasant, South Carolina 29465

Dear Mr. Young:

In a letter to this office you raised several questions regarding the Town of Mount Pleasant possibly changing its municipal election date. You particularly referenced a prior opinion of this office dated June 6, 2003 which also dealt with the issue of changing an election date and thereby extending the terms of the mayor and councilmen.

In your first question you asked whether there have been any changes in the law referenced in the June, 2003 opinion since it was issued. Based upon my review, I am unaware of any such changes.

You next questioned whether elected officials can shorten or extend their term in office so as to transition to a different election date. If so, you asked whether such can be done by majority vote of an elected body, even if some members are opposed to the change.

The June 6, 2003 opinion stated that

...this office has issued previous opinions addressing the question of whether municipalities are authorized to change election dates when the effect would be to extend (or reduce) the terms of office of incumbent officials. We have concluded that, as long as the exercise of this power is reasonable, for a public purpose (not for the benefit of council members and the mayor) and is precleared with the Department of Justice before the changes are implemented, municipalities generally possess this authority.

That opinion noted that, generally, pursuant to S.C. Code Ann. § 5-15-50 which gives municipalities the authority to establish by ordinance the time for general and special elections within the municipality, a municipality would be authorized to change the date of its elections by ordinance.

*Respectfully,
Henry McMaster*

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That opinion commented that "(i)t 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." An opinion of this office dated November 30, 1989 stated that the conclusion that a city could extend the time of an election so as to extend the term of an elected official's office would apply equally to shortening a term of office.

In the June, 2003 opinion reference was also made to Article XVII, Section 11 of the State Constitution which provides that officers "...shall hold their respective offices until their terms have expired and until their successors are elected or appointed and qualified..." The opinion concluded that "(g)iven that municipalities...have the authority provided by general law to change the date of municipal elections..., the terms of incumbent municipal officials would continue until the new date of the election and the qualification of the person elected." Prior opinions cited in the June, 2003 opinion had reached a similar conclusion. See: Ops. Atty. Gen. dated March 9, 2000, November 30, 1989 and July 11, 1980.

While these opinions deal with the situation where the date of an election is changed, thereby either lengthening or shortening a term of office, the June, 2003 opinion also responded to the question of whether a municipal council could expressly change the terms of a mayor or council member. Reference was made to an earlier opinion of the office which dealt with the question of whether a municipality could establish three year terms for council members and the mayor. That opinion concluded that based upon Section 5-15-40, a municipality would not have that authority. Such provision states that

(t)he mayor and councilmen of each municipality shall be elected for terms of two or four years.

The June, 2003 opinion concluded that

...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...(a town)...the authority to change the terms of office of mayor and council members from four years to "4 years plus 14 months."

As to your questions of whether such change can be done by majority vote of an elected body, even if some members are opposed to the change, I am unaware of any State law that comments on such question. Opinions of this office dated August 15, 1984 and March 18, 1980 generally state such procedural requirements are established by rules of the council itself.

In your last question, you asked whether an elected body can set election terms in advance of the election for a period shorter and/or longer than two or four years (phasing) in order to

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transition to a different election date. You indicated that a councilman has suggested a 38 month phasing term by election instead of extending or shortening a term after election.

As referenced above by the prior opinions of this office, a municipality would not be authorized to change the term of a mayor or councilman, but could change the dates of the election for these offices. Therefore, in my opinion, a municipality could shorten or extend the date of an election even if the effect would be to extend or shorten the term of an elected official.

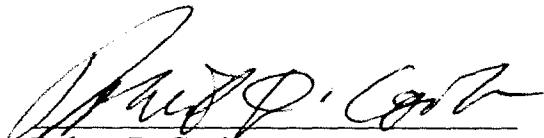
With kind regards, I am,

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:


Robert D. Cook

Assistant Deputy Attorney General