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HENRY McMASTER
ATTORNEY GENERAL

September 19, 2005

VIA FACSIMILE

Joseph A. Vasquez, Esquire
Setzler & Scott, PA
P. O. Box 4024
West Columbia, SC 29171-4024

Re: Municipal Council Election

Dear Mr. Vasquez:

This is a follow-up to a telephone conversation and also a letter of today's date in which you asked the question as to whether the winner of a municipal election in dispute can be sworn in, or does the current council member retain office pending the appeal. Specifically, you stated in your correspondence that

"The election was held September 13, 2005, and the results were contested by the unsuccessful incumbent candidate within 48 hours as set forth in South Carolina Code Section 5-15-130. The hearing was held on September 17, 2005, and the Municipal Election Commission denied the protest and upheld the results of the election. We have received verbal notice that the decision of the Municipal Election Commission will be appealed to the circuit court. The winner of the election, along with the other election winners, however, are to be sworn in tonight."

As per our conversation and referencing the language of S. C. Code §§5-15-120, 5-15-140, South Carolina Attorney General Opinions dated May 16, 1988, and May 15, 1995 (attached) and House Bill H. 3411 (also attached), until the time period of appealing the decision of the municipal election commission has expired or if an appeal is filed until the appeal is resolved, it would be inappropriate for the newly-elected officers to be qualified and the incumbent shall hold over.

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If further assistance is needed in this matter, please do not hesitate to contact me.

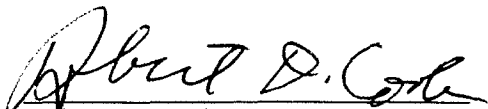
Very truly yours,



C. Harold Jones, Jr.
Senior Assistant Attorney General

CHJJr/rho

REVIEWED AND APPROVED:



Robert D. Cook
Assistant Deputy Attorney General