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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON  
ATTORNEY GENERAL

February 14, 2002

Kelly J. Golden, Esquire  
Beaufort County Attorney's Office  
Post Office Drawer 1228  
Beaufort, South Carolina 29901-1228

**Re: Your Letter of January 11, 2002**

Dear Ms. Golden:

In the above referenced letter, you have asked this Office for an "opinion concerning the application of S.C. Code §4-9-90 (1976, as amended) ..." to a situation created by the recent redistricting plan in Beaufort County. By way of background, you indicate that:

Beaufort County Council consists of eleven (11) members elected from single member districts. Robert E. Cuttino, Jr. represents District 10 and was elected to a 4 year term which expires December, 2004. Marvin H. Dukes, III represents District 11 and was elected to a 4 year term which expires December, 2002.

Under the 2001 redistricting plan, District 10 ("Port Royal") and District 11 ("Beaufort City") were combined. Both Mr. Cuttino and Mr. Dukes are electors in the new district, (District 11). Mr. Duke's term of office expires in December of 2002 and he has announced his intention to run for the House of Representatives rather than run for re-election to County Council District 11.

Given this background, you ask "does Mr. Cuttino serve out his unexpired term representing the new District, District 11?"

As you point out in your letter, the relevant portion of S.C. Code Ann. §4-9-90 provides as follows:

Any council member who is serving a four-year term in a district that has been reapportioned and whose term does not expire until two years after reapportionment becomes effective shall be allowed to continue to serve the balance of his unexpired term representing the people in the new reapportioned district if he is an elector in such reapportioned district. In the event that two or more council members, because

*Request Letter*

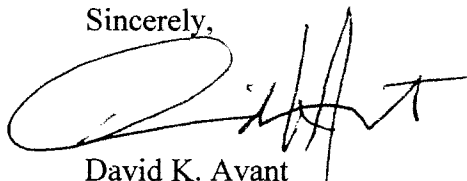
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of reapportionment, become electors in the same district, an election shall then be required. Provided, however, that if any seat should become vacant after election districts have been reapportioned but prior to the expiration of the incumbent's term of office due to death, resignation, removal, or any other cause, the resulting vacancy shall be filled under the new reapportionment plan in the manner provided by law for the district that has the same district number as the district from which the council member whose office is vacant was elected.... (Emphasis added).

Use of the word "shall" in a statute generally connotes mandatory compliance. S.C. Dept. of Highways and Pub. Transportation v. Dickinson, 288 S.C. 189, 341 S.E.2d 134 (1986). The facts provided clearly indicate that "two council members, because of reapportionment, [have] become electors in the same district." Therefore, Section 4-9-90 mandates that an election take place. The fact that Mr. Dukes "has announced his intention" not to seek re-election to County Council District 11 does not remove the requirement as his announcement in and of itself does not vacate his seat.

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 question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,

A handwritten signature in black ink, appearing to read 'David K. Avant', with a large, stylized initial 'D'.

David K. Avant  
Assistant Attorney General

DKA/an