The State of South Carolina

OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

February 4, 1997

The Honorable Dick Elliott
Senator, District No. 28
P.O. Box 3200
North Myrtle Beach, South Carolina 29582

Re: Informal Opinion

Dear Senator Elliott:

This Office has received your opinion request dated February 3, 1997. It is my understanding that your question concerns Ordinance Number 105-96. This Ordinance, which was recently passed by the Horry County Council, imposes a hospitality fee on the gross proceeds derived from the rental or charges on certain hotels, motels, and other sleeping accommodations and the paid admissions to places of amusement. You ask whether a petition signed by fifteen percent of the qualified electors of Horry County could call for a referendum to repeal the ordinance.

Since your are inquiring about repealing an ordinance, S.C. Code Ann. § 4-9-1220 (1986) requires consideration. Pursuant to § 4-9-1220, electors may petition for the repeal of certain Ordinances:

> Within sixty days after the enactment by the council of any ordinance authorizing the issuance of bonds, notes or other evidence of debt the repayment of which requires a pledge of the full faith and credit of the county, or requires the approval of the issuance of bonds by a public service district within the county a petition signed by qualified

Request Letter

              electors of the county equal in number to at least fifteen percent of the qualified electors of the county, or if such ordinance relates to a bond issue for a public service district, fifteen percent of the qualified electors of the district may be filed with the clerk of the county council requesting that any such ordinance be repealed; *provided*, however, that this section shall not apply to bond issues approved by referendum or to notes issued in anticipation of taxes. (emphasis in original).

        By opinions dated August 14, 1995 and August 27, 1982, this Office has advised that

              Section 4-9-1220 limits the repeal of ordinances by referenda to those authorizing the issuance of bonds, notes, and other debts requiring the pledge of the full faith and credit of the county. This should be distinguished from an ordinance proposed by petition and required by a referendum to be adopted by a county council.[1]

        It is my understanding that Ordinance Number 105-96 does not authorize the issuance of bonds, notes, and other debts requiring the pledge of the full faith and credit of the county. Therefore, since the use of §4-9-1220 is limited to the repeal of ordinances related to the types of indebtedness which require the full faith and credit of the county to be pledged for repayment, it is not applicable to this Ordinance. In addition, based on the prior opinions of this Office, I would advise that since a specific mechanism is in place for the repeal of ordinances, § 4-9-1210 could not be used for the repeal of Ordinance number 105-96.

---

    [1] It is observed that S.C. Code Ann. § 4-9-1220 has not been amended by the General Assembly since the opinion of August 27, 1982 was rendered by this Office. It is well recognized that the absence of any legislative amendment following the issuance of an opinion of the Attorney General strongly suggests that the views expressed therein were consistent with legislative intent. Scheff v. Township of Maple Shade, 149 N.J. Super. 448, 374 A.2d 43 (1977). Indeed, the General Assembly has on occasion acted swiftly in amending statutes following the issuance of an opinion by this Office; but such amendment has not been forthcoming in this instance.

Senator Elliott
Page 3
February 4, 1997

       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 kindest regards, I remain

                    Very truly yours,

                    Paul M. Koch
                    Assistant Attorney General