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The State of South Carolina



Office of the Attorney General

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October 5, 1993

Hubbard W. McDonald, Jr., Esquire
Marlboro County Attorney
Post Office Drawer 1315
Bennettsville, South Carolina 29512

Dear Mr. McDonald:

You had inquired about what action would be required to finalize a change in form of government for counties and municipalities. You advised that Marlboro County and the Town of Clio have recently changed forms of government; an auditor for the county and the town had received information that it would be necessary for each political subdivision to adopt a resolution changing the form of government, which resolution must then be filed with the Secretary of State. Each situation will be discussed separately, as follows.

Municipality

The Town of Clio held a referendum simultaneously with municipal elections in April 1992, in which voters changed the form of government from mayor-council to council. The change was submitted to the United States Department of Justice and was either approved or not disapproved within the specified time period.

As to change in form of government as to municipalities, S.C. Code Ann. § 5-5-30 (1976) provides in relevant part that "[t]he ordinance selecting the form of government shall be filed in the office of the Secretary of State who shall issue an appropriate certificate of incorporation to the municipality." By an opinion dated February 14, 1983, this Office has advised that § 5-5-30 would apply to the initial selection of a form of government and to subsequent changes.

Respectfully,

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Thus, as to the Town of Clio, § 5-5-30 would require that a copy of the ordinance changing the Town's form of government from mayor-council to council be filed with the Secretary of State.

County

Marlboro County held a referendum in 1992 to change the form of government from the supervisor form to the council-administrator form of government. The new form of government became effective on January 1, 1993, and an administrator has been hired. The change has been approved, or at least not disapproved, by the Department of Justice.

When the initial forms of government were selected for the various counties, S.C. Code Ann. § 4-9-10(a) required in pertinent part that "[t]he governing body shall by resolution provide for adoption of the form of government selected in the referendum, which shall be filed in the office of the Secretary of State and be effective immediately upon such filing." All of the provisions in § 4-9-10(a) pertain to determining the initial form of government and method of election of the governing body after the advent of Home Rule.

Changes from the initial form of government, method of election, and/or number of council members are covered by § 4-9-10(c). There is no specific requirement in § 4-9-10(c), unlike § 4-9-10(a), that a resolution be filed with the Secretary of State to effectuate the new form of government. This Office advised, in Op. Atty. Gen. No. 88-36, that

upon successful passage of the contemplated referendum, the county council would adopt an ordinance to implement the changes approved by the electorate. Such changes would then be submitted to the United States Department of Justice to be approved under the Voting Rights Act of 1965, as amended, prior to their becoming effective. [Cite omitted.]

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The county would not be prohibited from filing the implementing ordinance with the Secretary of State, but the plain language¹ of § 4-9-10(c) does not contain a requirement that such must be done, as is the case with municipalities by § 5-5-30.²

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosure

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions

¹In interpreting a statute, the primary objective of both the courts and this Office is to ascertain and effectuate legislative intent. Bankers Trust of South Carolina v. Bruce, 275 S.C.35, 267 S.E.2d 424 91980). Words used in a statute are to be given their plain and ordinary meanings. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980). In construing a statute, neither the courts nor this Office can read into a statute something which was not within the manifest intention of the legislature as evidenced by the statute itself. Laird v. Nationwide Ins. Co., 243 S.C. 388, 134 S.E.2d 206 (1964).

²As a practical matter, though not a statutory requirement, it might be a good idea to file a copy of the ordinance with the Secretary of State, so that at least one office in state government will have a complete, accurate, and current list of that type of information.