

The State of South Carolina



Office of the Attorney General

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May 24, 1994

The Honorable Roger M. Young
Member, House of Representatives
District No. 117 - Charleston-Berkeley Cos.
320B Blatt Building
Columbia, South Carolina 29211

Dear Representative Young:

This letter is in response to our telephone conversation of May 11, 1994. You informed me that you had received my letter to you, and although this answered the question you had asked, your real concern is whether an election must be called within a specified time following a vacancy occurring in the office of Mayor.

The provisions of S.C. Code Ann. §5-7-200 (b) (1976) anticipate that an election will be timely called. The statute states that

[a] vacancy in the office of mayor ... shall be filled for the remainder of the unexpired term at the next regular election or at a special election if the vacancy occurs one hundred eighty days or more prior to the next general election. [Emphasis Added]

The word "shall" in a statute connotes that the legislature intended to mandate the event occur. 73 Am.Jur.2d, Statutes, §22. It has been the prior opinion of this Office that the language in Section 5-7-200 (b) is clearly mandatory and cannot be waived. June 1, 1979 Opinion of James M. Holly to Albert M. Sparrow, Jr., copy attached.

The Legislature enacted legislation that provides for special elections in any office, not otherwise provided for by the code, in which there is a vacancy occasioned by death, resignation or removal from office. S.C. Code Ann, §7-13-190 (1993 Supp). The

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language utilized in this statute is also mandatory and requires that the filing for office in which there is a vacancy must be opened by a certain date. The statute reads in part as follows:

(A) Except as otherwise provided in this Code as to specific offices, whenever a vacancy occurs in office by reason of death, resignation, or removal and the vacancy in office is one which is filled by a special election to complete the term of office, this section applies.

* * *

(C) If the office is not one for which there are partisan elections, then the filing must be opened at noon on the third Friday after the vacancy occurs for a period to close ten days later at noon. ... The election must be set for the thirteenth Tuesday after the vacancy occurs. (Emphasis Added)

If, for some valid reason this statute is not followed, the municipality could set its own election dates. S.C. Code Ann. §5-15-50 (1993 Supp). However, prior to the holding of an election set under the provisions of §5-15-50, the election date would have to be precleared by the Justice Department which could substantially delay the holding of the election. See, 42 U.S.C. §1973.

The law provides that an election that is a hundred and eighty days or more prior to a general election must be called as a special election. S.C. Code Ann. § 5-7-200(b) (1976). If the election is unnecessarily delayed it could defeat the purpose of the Act, which is to hold a special election and not to allow the position to remain open until the general election.

Therefore, under whatever provision an election is called, if a special election is to be called because there are more than one hundred and eighty days before the election, it must be called in sufficient time to permit the election to be held timely.

Very truly yours,



Treva G. Ashworth
Deputy Attorney General


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REVIEWED AND APPROVED BY:



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