



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

April 13, 1995

Emil W. Wald, Esquire
City Attorney, City of Rock Hill
Post Office Box 790
Rock Hill, South Carolina 29731

RE: Informal Opinion

Dear Mr. Wald:

By your letter of March 27, 1995, to Attorney General Condon, you have sought an opinion as to whether a municipality may transfer some or all of its authority to conduct municipal elections to the county election commission if the municipality does not conduct its elections at the time of the general election, considering the language of S.C. Code Ann. §5-15-145 (1994 Cum. Supp.) as that statute was passing through the legislative process. You have also inquired as to the scope of the authority which may be transferred.

Section 5-15-145 provides as follows:

(A) Municipalities are authorized to transfer authority for conducting municipal elections to the county elections commission. County elections commissions are authorized to conduct municipal elections.

(B) As a condition of the transfer of authority to conduct elections pursuant to this section, the governing bodies of the municipality and the county must agree to the terms of that agreement. The municipal ordinance must state what authority is being transferred and the county ordinance must accept the authority being transferred.

(emphasis added) to the county election commission. The county election commission is then authorized to "conduct municipal elections" (emphasis added). The governing bodies of the municipality and the county must agree to the terms of the transfer and enact ordinances which embody the terms of the agreement. Section 5-15-145 (B) directs: "The municipal ordinance must state what authority is being transferred and the county ordinance must accept the authority being transferred." (Emphasis added.) The plain language does not appear to contain any limitation on transfer of authority, though the statute appears to contemplate that all authority granted to municipalities with respect to the conduct of municipal elections might not be transferred.

Exactly what constitutes the "conduct" of a municipal election may be examined. The word "conduct," used as a verb, has been defined as "to introduce, to manage, to command," or "to manage, carry on, control, direct." People v. Hill, 18 Misc.2d 352, 192 N.Y. Supp. 342, 344 (Ct. Special Sessions, New York City 1959). In State v. Mahfouz, 181 La. 23, 158 So. 609 (1935), the court stated that "[t]he transitive verb 'conduct,' says Webster, 'stresses the idea of immediate supervision or personal leadership.' It means to lead, to have direction of, to manage, to direct, to carry on." 158 So. at 609. The South Carolina Supreme Court has on at least one occasion stated that, in construing the concept of conducting an election, the term "conduct" would not be used in a narrow or limited sense, concluding that conducting the election would also embrace declaring the results of the election, though the decision did not construe §5-15-145 and the facts of the case are not similar to the situation presented here. Blake v. Walker, 23 S.C. 517 (1885). Thus, to conduct an election would be to manage, direct, or carry on the election, in a broad sense of the term "conduct."

An election has been described as a process rather than a single event. Holden v. Phillips, 132 S.W.2d 419 (Tex. Civ. App. 1939). The court in State ex rel. Shaw v. McCoy, 2 Marv., Del., 576, 43 A. 270 (1897), described an election as involving

every element necessary to the complete ascertainment of such expression of the popular will, embracing the entire range, from the deposit of the ballot by the elector up to the final ascertainment and certification of the result. An election by the people means and includes the perfected ascertainment of such result.

43 A. at 273. In Gragg v. Dudley, 143 Okla. 281, 289 P. 254 (1930), the court stated that

[a]n election is a process which includes registration, nomination, the voting and the manner in which the votes are to be counted and the result made known. Each of these steps must be taken in pursuance of the law existing

at the time the election is had. The declaration of the result is an indispensable adjunct of what the choice is and by which the person elected can know that he is entitled to the office. ...

289 P. at 257. The court in Gragg continued that "[u]ntil the result is determined and declared, either in the manner so prescribed, or by the adjudication of a tribunal of competent jurisdiction, the election is not complete;" Id.

Because §5-15-145 does not appear to place a limitation on the duties which may be transferred from the municipal election commission to the county election commission for the conduct of municipal elections, I am of the opinion that there is no statutory limitation on the duties that may be so transferred. There may be other limitations which would be taken into account when the transfer of authority is contemplated and negotiated between the municipality and the county, however, which limitations would be embodied in the ordinances concerning the transfer of authority.

Undoubtedly, the municipality and the county would want to consider some matters which are more practical than legal issues. One such issue would be the certification of candidates by the municipal election commission if the municipality should be located other than in the county seat or in a locality where the county election commission does not have an office. Such would be a matter of convenience for a prospective candidate who may not have the means to reach the county seat or the office where the petition or statement of candidacy is to be filed, for example. As to certification of results, the municipality may wish to consider whether to retain that authority as the results of the election relate to the municipality; other elections which are conducted and the results declared by the county election commission are county-related, for example. This would be a matter of preference for the municipality to determine. As to hearing protests or contests, if the county election commission conducts the election, it is very possible that the protest or contest would be heard on some action the commission did or did not take; the question to be decided there is a policy question of whether another board (the municipal election commission) should hear the protest or contest.¹ These remain policy questions to be decided outside the scope of an opinion, formal or informal, of this Office or its attorneys.

¹It should also be noted, however, that the county election commission organizes as the county board of canvassers pursuant to §7-17-10 and is thus possibly in a position to hear protests or contests on actions the county election commission did or did not take, perhaps even more so in those counties where the election commission and the board of voter registration have been combined, in a county election.

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In conclusion, I am of the opinion that:

(1) A municipality not holding its elections at the time of the general election may transfer its authority to conduct municipal elections to the county election commission, subject to the terms of the transfer being embodied in ordinances adopted by the municipal council and county council.

(2) The plain language of §5-15-145 does not appear to contain a limitation on the extent of the authority to be transferred. There are policy or practical considerations which might suggest that the municipality retain certain powers; those, however, are questions for the municipality to decide, in conjunction with the negotiations with county council over what authority is desired to be transferred by the municipality and what authority will be accepted by county council.

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. I trust that it has satisfactorily responded to your inquiry and that you will advise if clarification or additional assistance should be necessary.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General