



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

August 14, 1995

The Honorable Sandi S. Wofford
Member, House of Representatives
315 Pine Cone Court
Ladson, South Carolina 29456

RE: Informal Opinion

Dear Representative Wofford:

By your letter of June 29, 1995, to Attorney General Condon, you sought an opinion as to whether S.C. Code Ann. §4-9-1210 could be utilized to have repealed Ordinance No. 95-5-11 adopted by Berkeley County Council, which ordinance concerns the regulation of the use of public and private water distribution systems and wastewater collection, treatment and disposal systems. The ordinance as adopted by Berkeley County Council calls for mandatory tap-ons for properties located within a certain distance of the water distribution system. One of your constituents would propose to repeal this ordinance by an initiated ordinance.

Section 4-9-1210, cited by your constituent, provides as follows:

The qualified electors of any county may propose any ordinance, except an ordinance appropriating money or authorizing the levy of taxes, and adopt or reject such ordinance at the polls. Any initiated ordinance may be submitted to the council by a petition signed by qualified electors of the county equal in number to at least fifteen percent of the qualified electors of the county.

It appears from your letter, however, that the constituent would not actually be proposing an ordinance but instead would be attempting to repeal the ordinance already in place.

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In that respect, another statute, §4-9-1220, requires consideration. By §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 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electors of the district may be filed with the clerk of the county council requesting that any such ordinance be repealed; provided, however, that this section shall not apply to bond issues approved by referendum or to notes issued in anticipation of taxes.

This Office has advised previously, by an opinion dated August 27, 1982¹ (copy enclosed), 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. ...

If the actual intent of your constituent is to have Ordinance No. 95-5-11 of Berkeley County Council repealed, the statute governing repeal of ordinances by the initiative and referendum process, §4-9-1220, would not be applicable due to its express application to the repeal of ordinances related to types of indebtedness which require the full faith and credit of the county to be pledged for repayment. Based on the prior opinion of this

¹It is observed that §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.

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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 ordinances adopted by a county council.

This letter is an informal opinion only. It has been written by a designated Senior 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 the foregoing 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
Senior Assistant Attorney General

Enclosure