



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

November 20, 1996

The Honorable Robbie Dix, Jr.
Mayor, Town of Allendale
939 Flat Street
Allendale, South Carolina 29810

Re: Informal Opinion

Dear Mayor Dix:

This Office has received your recent opinion request. You advise that the Town of Allendale presently operates under a Council form of government. You further advise that the Town has discussed changing the form of government to Mayor-Council. In lieu of this discussion, you ask for this Office's opinion on the following three questions:

1. Can we [the Town of Allendale] hold a Special Election for this one item [a change in the form of government]?
2. Can Town funds be used for the same [the Special Election]?
3. [If the form of government is changed to Mayor-Council] [the] Mayor's responsibility and time on the job will change from part time to full time, can the salary of [the] Mayor change?

LAW/ANALYSIS

As to your first question, S.C. Code Ann. §5-5-20 (Supp. 1995) provides that a municipality may hold a referendum to change the form of government

... if a petition executed by fifteen percent of the qualified electors is presented ... or if the municipal governing body shall by ordinance call for such an election, the

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municipal governing body shall conduct a special election not later than ninety days nor earlier than thirty days after the receipt of the certified petition or passage of the council ordinance

Therefore, pursuant to the statutory authority, the Town of Allendale may hold a special election to change the form of government from Council to Mayor-Council.

In regards to your second question, pursuant to S.C. Code Ann. § 5-5-50 (1977), the municipality shall pay all expenses incurred in the conduct of any election. Accordingly, the Town of Allendale's funds shall be used to pay for the special election.

As to your third question, I refer you to the attached opinion dated April 8, 1996. This opinion, which was addressed to J. Martin Harvey, Allendale Town Attorney, discusses the appropriate measures which should be taken when attempting to increase the salaries of a mayor or members of council.

In addition, I note that before a new form of government may be implemented, preclearance under the Voting Rights Act of 1965, as amended, must be sought from the United States Department of Justice. Until such time approval is received from the Department of Justice, the change in form of government may not be implemented. NAACP v. Hampton County Election Commission, 470 U.S. 166, 105 S.Ct. 1128, 84 L.Ed.2d 124 (1985). Once a submission is made, the Department of Justice has sixty (60) days to review the submission and either object to the submission or decline to object; the sixty days can be tolled if the Department of Justice requests additional information from the submitting entity (in this case, the Town of Allendale).

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

Enclosure