

The State of South Carolina



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April 27, 1990

Roy McBee Smith, Esquire
Spartanburg County Attorney
Post Office Box 5306
Spartanburg, South Carolina 29304

Dear Mr. Smith:

By your letter of April 5, 1990, you had enclosed a copy of a pending ordinance concerning the changes in number and method of election of Spartanburg County Council members and have asked for our opinion as to whether Section 4(b) is valid and legal according to the terms of the Home Rule Act. For the reason following, we concur with your opinion that Section 4(b) would be valid and legal.

The pending ordinance, in Section 1, sets forth the history and findings which resulted in the changes in number of council members and their method of election. Section 2 states that six members of council will be elected from single-member districts and that the chairman will continue to be elected at large; formerly, all four members and the chairman were elected at large. Section 3, with reference to an attached map of the county, defines the single-member districts. Staggered terms are provided for in Section 5. Other matters not related to your inquiry are covered in Sections 6 and 7.

Section 4 would continue the present terms of the incumbent council members as stated:

- (a) Pursuant to Section 4-9-10(e) all members of County Council serving terms of office on the date on which a particular form of government becomes effective shall continue to serve the terms for which they were elected until their successors are elected and have qualified.

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(b) According to Plan D present council member Danny E. Allen is an elector residing in District Number 4 and present council member David G. Dennis is an elector residing in District Number 3, and both have unexpired terms of more than two years from January 1991. If the Justice Department does not assert objection thereto, council member Danny E. Allen shall serve as the single member representative of District Number 4 and David G. Dennis shall serve as the single member representative of District Number 3 until the completion of their respective terms of office and until their successors are elected and have qualified.

(c) In the event the Justice Department asserts objection to the service of present County Council members Danny E. Allen and David G. Dennis as single member representatives of District Number 4 and District Number 3 respectively, they shall continue to serve their terms of office as representatives at large and one council member from each of the six districts and the council chairman at large shall be elected in the next ensuing general election or at such time as the Justice Department approves.

The statute of the Home Rule Act, Act No. 283 of 1975, which is responsive to your inquiry is now codified as Section 4-9-90 of the South Carolina Code of Laws (1976 & 1989 Cum.Supp.). The last paragraph provides in relevant part:

Any council member who is serving a four-year term in a district that has been reapportioned and whose term does not expire until two years after reapportionment becomes effective shall be allowed to continue to serve the balance of his unexpired term representing the people in the new reapportioned district if he is an elector in such reapportioned district. ...

You advise that the terms of office of two present council members will expire more than "two years after reapportionment becomes effective." The plain language of Section 4-9-90, which must be interpreted literally in the absence of ambiguity, State v. Goolsby, 278 S.C. 52, 292 S.E.2d 180 (1982), would permit these council members to continue to serve, to represent the districts of which they are electors, once the district lines are in place, based on the facts you have provided.

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Arguably, the districts are not being "reapportioned," as the first apportionment is occurring. In Bailey v. Abington, 148 S.W.2d 176 (Ark. 1941), however, the terms "apportionment" and "reapportionment" were used interchangeably to mean "the dividing of the state into districts so that each district has a certain population" for purposes of legislative representation. Id., 148 S.W.2d at 180. It would therefore be appropriate to follow the terms of Section 4-9-90, as to continuity of terms of office, though the districts are being apportioned for the first time.

For this reason, we concur with your opinion, as Spartanburg County Attorney, that Section 4(b) of the proposed ordinance would be legal and valid under the Home Rule Act.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/nnw

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions