

4126- B.16

The State of South Carolina



Office of the Attorney General

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June 5, 1990

J. David Standeffer, Esquire
Anderson County Attorney
Post Office Box 1965
Anderson, South Carolina 29622

Dear Mr. Standeffer:

By your letter of May 21, 1990, you have asked for our opinion on whether Anderson County may schedule an election to be held in November 1990 to change the form of government or number of council members or method of election. As will be discussed more fully below, we concur with your conclusion that such election would be permissible.

Background

The history of Anderson County Council form, number of members, and method of election is partially discussed in an opinion of this Office dated April 19, 1984. Subsequent to that opinion, in 1986, Anderson County held a referendum attempting to change the number of council members from five to seven (two elected at large and five from single-member districts) and the term of office from two-year to four-year staggered terms. In 1988, another referendum was held to change from five single-member districts to seven single-member districts and from two-year terms to four-year staggered terms. Both the 1986 and the 1988 referenda failed.

Discussion

The provision of law which must be considered to resolve your inquiry is Section 4-9-10(c) of the South Carolina Code of Laws (1976, as revised), which provides in relevant part:

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No change to an alternate form of government, different number of council members, or method of election of council including the chairman as a result of a referendum shall become effective unless such proposed form receives a favorable vote of a majority of those persons voting in a referendum. In any referendum, the question voted upon, whether it be to change the form of government, number of council members, or methods of election, shall give the qualified electors an alternative to retain the existing form of government, number of council members, or methods of election, shall give the qualified electors an alternative to retain the existing form of government, number of council members, or method of election or change to one other designated form, number, or method of election. After a referendum has been held and whether or not a change in the form results therefrom, no additional referendums shall be held for a period of four years.
... [Emphasis added.]

Reviewing the history of referenda held in Anderson County, this Office advised in the opinion of April 19, 1984, that because a referendum had been held in November 1982, Section 4-9-10(c) would preclude the holding of another referendum until November 1986. We note from the subsequent history that an unsuccessful referendum was held in November 1986. Based on previous history and prior opinions of this Office dated March 21, 1983 and April 19, 1984 (copies enclosed), the next appropriate date on which a referendum might be held would be November 1990.

Notwithstanding the plain language of Section 4-9-10(c) prohibiting another referendum for four years following the unsuccessful referendum of November 1986, another referendum was held in November 1988. It is well-recognized that an election held without statutory authorization therefor will be invalid. See 29 C.J.S. Elections §81. Thus, if challenged, the referendum of November 1988 could well be invalidated by a court since there was no statutory authorization to hold such a referendum at that time. The most recent statutorily authorized referendum was held in November 1986, thus permitting the next statutorily authorized referendum to be held in November 1990.

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With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/nnw

Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions