

The State of South Carolina

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Office of the Attorney General

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June 13, 1989

William P. Griggs, Esquire  
Griggs, Spruill & Harris  
222 Market Street  
Cheraw, South Carolina 29520

Dear Mr. Griggs:

Your letter addressed to Attorney General Medlock has been referred to me for reply. You have stated that the Town of Cheraw is changing from at large elections to single member districts. You have asked the following questions:

- 1) Is an election required in a newly created district which includes two incumbent councilmembers with terms running to January, 1991?
- 2) Is an election required in a newly created district which includes one incumbent councilmember with a term running to January, 1989, and one incumbent councilmember with a term running to January, 1991?

In your letter you stated that you have concluded that an election is required in all districts. I agree.

There is no specific statute that governs the transition from one method of election to another. South Carolina Code of Laws, 1976, Section 5-5-60 provides that

[u]pon initial adoption of or on any change to one of the alternate forms of government, all members of the existing governing body shall continue to serve their elected terms and until their successors are elected and qualified.

Although this section discusses changes in forms of government, not methods of election, this provision would most probably be applicable to both situations.

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There is no statute which specifically requires an election for all members following the adoption of a new method of election. However, a new election for all the newly created single member district seats would be a logical and efficient method of proceeding and one which was generally followed in the home rule transitions. If all members are not elected at an initial election, but instead are elected over a period of two years during general elections, the City would actually be operating under a statutorily unauthorized hybrid system of at large and single member district methods of election. See July 26, 1976 letter to Earle from Henderson, Answer to Question 5 (copy enclosed).

In a transition election a councilmember could choose to run for one of the newly formed single member districts or he could continue to hold an at large office until his term of office expires. If an incumbent chose to run for a new seat but lost that election, he could still continue to serve out his at large term. The resulting board following this transition election would be a superboard comprised of members elected under the at large system who did not choose to run for a single member seat or who lost in this election and the newly elected single district members. See, October 3, 1975 letter to Smith from Henderson, May 26, 1977 letter to Zier from Ashworth; November 2, 1977 letter to Hawthorne from Ashworth; November 12, 1981 letter to Archibald from Henderson (copies enclosed).

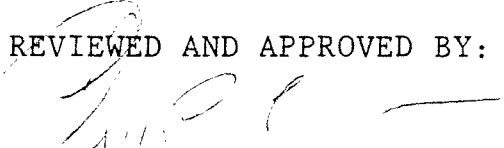
Sincerely,



Treva G. Ashworth  
Senior Assistant Attorney General

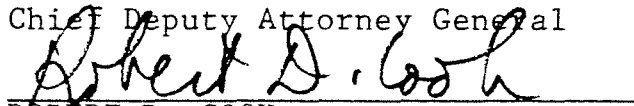
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Enclosures

REVIEWED AND APPROVED BY:



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EDWIN E. EVANS  
Chief Deputy Attorney General



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ROBERT D. COOK  
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