

## The State of South Carolina



## Office of the Attorney General

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August 22, 1989

Peter D. Hyman, Esquire  
Florence County Attorney  
Post Office Box 1770  
Florence, South Carolina 29503

Dear Mr. Hyman:

By your letter of August 10, 1989, you have raised several questions about a referendum possibly to be held with respect to water and sewer utilities in Florence County, pursuant to Article VIII, Section 16 of the State Constitution. Each of your questions will be addressed in turn.

Question 1

With respect to a referendum possibly to be held pursuant to Article VIII, Section 16 of the State Constitution, you have asked what specific requirement of notice may be applicable to the holding of the referendum.

The constitutional provision is silent as to specific notice required to be given prior to holding the referendum. This Office has advised on several occasions that Section 7-13-35, Code of Laws of South Carolina (1988 Cum. Supp.), would apply to the holding of a referendum. That section provides:

The Authority charged by law with conducting an election shall publish two notices of general, special, and primary elections held in the county or municipality in a newspaper of general circulation in the county or municipality. Included in each notice must be a reminder of the last day persons may register to be eligible to vote in the election for which notice is given, notification of the date, time, and location of the hearing on ballots challenged in the election, a list of the precincts involved in the election, and the location of the polling

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places in each of the precincts. The first notice shall appear not later than sixty days prior to the election and the second notice shall appear not later than two weeks after the first notice.

See, for examples, Ops. Atty. Gen. dated May 30, 1979; August 18, 1982; July 27, 1983; and September 7, 1982 (copies enclosed).

Thus, we would advise that Section 7-13-35 of the Code be followed to provide notice prior to holding a water and sewer referendum under Article VIII, Section 16 of the Constitution.

### Question 2

You have also asked whether a referendum must be conducted with a general election.

In Section 7-1-20 of the Code is the following:

(1) "General election" means the election provided herein to be held for the election of officers to the regular terms of office provided by law, whether State, United States, county, municipal or of any other political subdivision of the State, and for voting on constitutional amendments proposed by the General Assembly;

(2) "Special election" means any other election including any referendum provided by law to be held under the provisions of law applicable to general elections[.]

Thus, a referendum is considered to be a special election.

We have been unable to locate any statute, particularly with respect to Article VIII, Section 16 of the Constitution, which would require such a referendum to be held at the time of a general election; holding the referendum at the time of a general election is certainly one option but separate notice from that provided for the general election would be required. See Op. Atty. Gen. dated September 7, 1982.

### Question 3

In a referendum held in Florence County on November 7, 1978, with respect to water and sewer systems, the electorate approved the following: that Florence County

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be authorized to acquire by initial construction or purchase and thereafter operate and maintain a sewer system or sewer systems, a water system or water systems, or a combined water and sewer system or systems, provided that no county taxes nor revenue sharing shall be used to support such system or systems;... .

To ratify the results of the referendum, Florence County Council adopted Ordinance 8-78/79, which provided in part: "In no case shall the Department [of Public Works] recommend or consider the use of County taxes or revenue sharing for the support for any of the activities authorized hereunder." You have asked whether the ordinance may be amended to delete this provision, or in the alternative whether such may be amended only by another referendum.

In an analogous situation, we advised in an opinion dated April 29, 1988:

To change from levying no county taxes to establishing a mileage level if York County should decide to implement water and/or sewer services under the favorable 1981 referendum would, in our opinion, require another referendum to either remove the present limitation or establish a maximum or minimum level of taxation, whichever would be most acceptable to those involved in the decision-making process. As stated in 6 McQuillin, Municipal Corporation, §21.11, "Where initiative and referendum prevail, a usual restriction is that ordinances or amendments thereto, when adopted by the electors, cannot be repealed by the council or other municipal legislative body." In Allen v. Hollingsworth, 246 Ky. 812, 56 S.E.2d 530 (1933), the Kentucky Court of Appeals stated:

Municipal councils and substituted bodies represent the inhabitants in their corporate capacity. ... They are but the servants of the people and when the people register their will in respect to things directly submitted to them, that will is controlling. ...[C]ity councils are bound to observe every provision of the submis-

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sion of the question of bond issues whether required by statute or not, upon the theory that to hold otherwise would open the door to fraudulent submissions and for obtaining without fraud a grant of power that might otherwise have been denied.

Id., 56 S.E.2d at 533. Based on the foregoing, the will of the electorate as expressed in the 1981 referendum must be effectuated if the authority conferred by the successful referendum is acted upon. See also Op. Atty. Gen. dated July 9, 1985... .

Based on the reasoning and authority contained in the opinion of April 29, 1988 and an advice letter of July 3, 1985 (copies enclosed), it is the opinion of this Office that a referendum would be required to remove the limitation, established in the previous referendum, against using county taxes for water and sewer purposes. In our view, merely amending Ordinance 8-78/79 would not be sufficient.

With kindest regards, I am


Sincerely,

*Patricia D. Petway*  
Patricia D. Petway  
Assistant Attorney General

PDP/nnw

Enclosures

REVIEWED AND APPROVED BY:

  
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Robert D. Cook  
Executive Assistant for Opinions