

# The State of South Carolina



Office of the Attorney General

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May 10, 1988

The Honorable Ronald P. Townsend  
Member, House of Representatives  
436-C Blatt Building  
Columbia, South Carolina 29211

Dear Representative Townsend:

Referencing a recent successful referendum in the City of Belton to change the form of government from mayor-council to council, you have asked when the new form of government will become effective. Several aspects of the question must be addressed.

Section 5-5-60 of the Code of Laws of South Carolina (1976) must be considered in answering your question. That section provides:

Upon 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 qualify.

I note that an election of council members was held in February 1988, with terms of those elected to expire in February 1990. Those council members presently serving are entitled to continue to serve their terms, by the terms of Section 5-5-60.

In addition, before the 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

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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 (here, the City of Belton).

In a proposed ordinance which will implement the new form of government for the City of Belton, on page 10, is the following as to the time of implementation:

The new form of government shall not come into full force and effect until each provision to the structure of said government is enacted. The operation of the municipality under the powers and responsibilities of the new form of government shall be phased in upon the pre-clearance from The United States Justice Department and said date shall be the effective date of the new form of government for its implementation.

One provision which must be met is election of council members under a staggered election scheme, which will be implemented in February 1990. Preclearance is another provision which must be met; the proposed ordinance will phase in implementation of the powers and responsibilities of the council form of government upon the receipt of preclearance. Assuming no difficulty with the preclearance process the entire change to the council form of government will be completed with the February 1990 elections, though other aspects will have been phased in earlier.

The Home Rule Act, Act No. 283 of 1975, as amended by Act No. 623 of 1976, does not expressly address the issue of when a change to a new form of municipal government becomes effective. Given the constraints imposed by statutory law, the approach proposed by the above-cited ordinance appears to be the most reasonable approach possible. It takes into account state and federal statutory requirements and at the same time begins, as early as possible, to carry out the will of the electorate as expressed in the successful referendum. Due to the lack of legislative guidance, this Office cannot say with any degree of certainty that the approach proposed by the City of Belton is erroneous.

I hope that the foregoing will be of assistance to you. Please advise if you have additional questions or need clarification of anything contained herein.

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With kindest regards, I am

Sincerely,

*Patricia D. Petway*  
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Assistant Attorney General

PDP:sds

REVIEWED AND APPROVED BY:



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cc: John J. Stathakis, Esquire