

The State of South Carolina



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Opinion 128781
pg 213

September 17, 1987

The Honorable Isadore E. Lourie
Senator, District No. 21
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator Lourie:

With reference to a pending referendum in Richland County in which the electorate will be asked to consider changes in the number of members and method of election of Richland County Council members, you have asked this Office to address the following questions:

1. Should a referendum called by a county council pursuant to Section 4-9-10(c) of the Code of Laws of South Carolina, which attempts to change the size and method of election of the council, be done by council by resolution, which requires one reading, or by ordinance, which requires three readings and a public hearing?
2. If the referendum attempts to make two changes in the council, i.e., reduction of size and method of election, must each voter be given the option to keep the status quo for each change?

Each of your questions will be addressed separately, as follows.

Question 1

The necessity of an ordinance, as opposed to a resolution, by a county council which calls for a referendum has not been addressed in the Home Rule Act, Section 4-9-10 et seq. of the Code. However, in an opinion of this Office dated August 18, 1982, the following is precisely on point:

A county council may call for a referendum to change the form of government pursuant to Section 4-9-10(c), CODE OF LAWS OF

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SOUTH CAROLINA, 1976 (Cum. Supp.). While that provision is silent as to whether or not it should be called by resolution or ordinance, my opinion is that the safest method is by ordinance because any "legislative action" must be taken by ordinance [§ 4-9-120, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended] and there is authority for the proposition that providing for an election or referendum is a legislative action. 5 McQUILLIN MUNICIPAL CORPORATIONS §15.04.

Therefore, in response to your first question and in keeping with advice consistently given by this Office in the same circumstances, we would advise that Richland County Council adopt an ordinance to call for a referendum for consideration of changes in the number of council members or the method of their election.

Question 2

In expanding upon your second question, you have asked whether the voter must be given the right to vote to reduce the size of council or keep the current number of council members, and by separate question vote to go to single-member districts or keep the current at-large method of election.

Section 4-9-10(c) of the Code contemplates that, after the initial form of government, number of council members, and their method of election have been established in a particular county, changes in one or more of those actions may be desirable. Section 4-9-10(c) makes it clear that, if a referendum should be called, the electorate must be given an alternative to retain the existing form of government, number of council members, or method of election or to change to one other designated form, number, or method of election. How the question or questions should be framed is not addressed by Section 4-9-10(c), however.

By Opinion No. 83-16 dated May 17, 1983, this Office undertook to advise what the ballot in a referendum conducted pursuant to Section 4-9-10 should contain:

You have asked for an opinion as to the questions which must appear on a ballot in a referendum to change the form of government, number of council members, or method of election of council including the chairman. I would advise that a ballot should contain only the question or questions as set out in the petition or as called for by the council. § 4-9-10, South Carolina Code of Laws,

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1976 (1982 Supp.)). Those questions can call for a change to another specific form of government, a change in the number of council members, or a change in the method of election of the council including the chairman. Id. For each of these questions presented, the ballot must also offer the alternative of retaining the existing form of government, a number of council members, or method of election as the case may be. Id. However, only the questions presented by the petition or by the council should appear on the ballot.

Thus, this Office has previously not advised that a referendum be confined to only a single question consolidating all changes under consideration, with of course an alternative question (or questions) to maintain the status quo.

By an opinion dated April 19, 1984, this Office observed that "[i]n November 1982, Anderson County voters approved a referendum to change the form of government to 'council-administrator' but failed to approve a referendum which would have changed the composition of County Council from five to nine members." In the opinion referred to earlier dated August 18, 1982, it was noted that "[i]f a referendum is held to change the form of government without, at the same time, submitting a proposed change in the method of election and the number of members to the voters, the method of election and number of members will remain unchanged." These opinions and observations concur with Opinion No. 83-16 that more than one question may appear on the referendum ballot.

A strong argument may be made that if more than one change is contemplated by a county council, each change should be presented separately on the referendum ballot to allow the voter to express his intent more completely. For example, a decrease in the number of council members may not be favorable to a voter who does wish to elect council members from single-member districts. If both questions were presented together, the will of that voter could not be adequately expressed; he would be forced to vote favorably for one proposal which he did not favor, or to vote negatively against the proposal he favored to be able to express his will as to the portion of the question he disfavored. Setting forth each question separately, allowing one alternative and a choice to maintain the status quo, would permit a more complete expression of the will of the electorate.

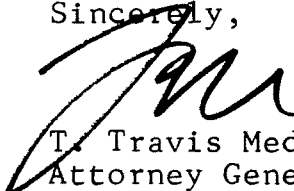
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While the law does not expressly address the format which the questions on the referendum ballot must take, in accordance with advice previously given, we would advise that the ballot may contain, separately stated, questions as to changes in the form of government, number of council members, and/or method of election. Each question must present an alternative to change to one designated form, number, or method of election and an option to maintain the present form, number, or method of election. Although the statute is not absolutely clear on this point, we feel that this approach is the more reasoned approach and is one which will reduce confusion to the voters and allow a more thorough expression of the voters' intent.

In conclusion, it is the opinion of this Office that:

1. An ordinance of Richland County Council, rather than a resolution, would be the safer way to call for a referendum to consider changes in the number of members or method of election of Richland County Council members.
2. The better reasoned approach and one which will allow a more thorough expression of the voters' intent would be to propound each of the various changes in a separate question on the referendum ballot, at the same time insuring that the alternatives mandated by Section 4-9-10(c) of the Code are provided.

Sincerely,



T. Travis Medlock
Attorney General

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Enclosures: Ops. Atty. Gen. dated August 18, 1982
May 17, 1983
April 19, 1984