

1982 WL 189263 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 21, 1982

*1 Honorable Larry A. Martin
Representative
District No. 4
Route 5, Box 545
Easley, South Carolina 29640

Dear Representative Martin:

Mr. McLeod has referred your letter to me in which you requested an opinion on Mayor Jackson's behalf. The Town of Liberty, pursuant to court order, had to re-run its Town election with the same candidates and electorate as those who participated in the original October 10, 1980 election. In this election Randolph Smith received 86 votes, Carl Sargent received 67 votes and R. A. McCraney received 54 votes. Liberty is governed by a plurality vote requirement with staggered terms. The person receiving the largest number of votes would receive a four year term and the person receiving a lesser amount of votes would receive a two year term.

Under these provisions Randolph Smith was declared elected and Carl Sargent and R. A. McCraney faced a run-off election. In this election Carl Sargent received 113 votes and was declared elected. The question you now raise is whether Randolph Smith or R. A. McCraney should receive a four year term.

This situation is not specifically governed by statute or Town ordinance. Additionally, I have been unable to find any general law or case law for precedent. Section 1-H-101 of the ordinance governing terms of office states in part that [i]n the first election conducted in which four (4) year terms shall apply, the two (2) candidates elected by wards to council with the highest vote count shall be elected for two (2) year terms . . . (emphasis added)

It may be that the person who received the highest vote in the initial election should be considered to have received the four year term as he received the highest vote in the initial election in a three-way race. The vote in the run-off is only a determination between two men and, of course, this figure would generally be higher. However, the provisions of the ordinance do not differentiate between the highest vote in a run-off or in the initial election. Under a strict interpretation of the ordinance, it would appear that Carl Sargent would be entitled to a four year term as he received the highest number of votes.

As this is an extremely close question, I believe it would be advisable to check with the city attorney and the minutes of the Town meetings adopting the ordinance to see if the minutes may shed some light on the intent of the municipality in passing these provisions. Unless these minutes clarify the question, only a court of competent jurisdiction could render a definitive ruling on this question.

Sincerely,

Treva G. Ashworth
Senior Assistant Attorney General

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