

1981 WL 158011 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 12, 1981

*1 Honorable Irene K. Rudnick
Representative
District No. 85
Box 544
Aiken, South Carolina 29801

Dear Ms. Rudnick:

Mr. McLeod has referred your recent letter to me for reply. You have inquired if the members of the Aiken County Council would have to stand for re-election following reapportionment of the Aiken County district lines. You have also inquired if the county council chairman who was elected at large would have to run for re-election following the reapportionment.

Clearly the county council chairman would not have to run for re-election following a reapportionment as he ran at large from the county and, therefore, would not be affected by the results of reapportionment. However, it is not as clear whether or not the county council members would have to run for re-election.

I understand that there is a Senate bill pending, S.407, which if passed would require any county that is reapportioned to have a new election following the reapportionment for the county council offices. It would be helpful to resolve the ambiguity in this area to have either this legislation or some other legislation clarify what will happen to the county officers following reapportionment.

The General Assembly would have the power to require a new election to be held for these offices as the General Assembly has the power to change the term of any office that is not governed by constitutional provisions. In 67 C.J.S., Officers, § 70 it is stated that

[t]he sovereign power creating an office may change its tenure in the absence of constitutional restriction . . . Accordingly, the legislature may change the term of an office during the term of an incumbent . . .

In [Ward v. Waters](#), 184 S.C. 353, 192 S.E. 410 (1937), the Supreme Court quoting with approval from [State v. Hough](#), 103 S.C. 87, 87 S.E. 437, held that the term of office in the county government in Florence County could be extended by the Legislature as [t]hose holding offices created by the legislature hold them subject to the legislative will. The power that creates an office can impose such limitations and conditions upon the manner of filling it, and the tenure and the exercise of the duties of the office, and may modify or abolish any of these . . . Ward, supra, at 360-361.

And in [Walpole v. Wall](#), 153 S.C. 106, 150 S.E. 760 (1929), a suit was brought contesting whether or not members of a board of trustees had been legislated out of office by newly enacted legislation. The court stated that [s]chool trustees are legislative, not constitutional, officers whose terms may be ended or extended at the will of the Legislature. Walpole, supra at 117. See also 1936 Att'y Gen. Op. 137.

Therefore, the Legislature can amend by ending or extending the term of any office created pursuant to the power of the Legislature.

If the General Assembly should decide that it does not want to shorten the terms of the affected members of the county councils, another possible alternative would be to follow the procedure utilized following the passage of the Home Rule Act. The procedure used during this transition was to allow for 'super boards'. This in effect meant that the persons who had additional years to serve in their elective offices were allowed to continue to serve while a new board was elected under the new form of government. There did appear to be some drawbacks in this approach in that some boards proved to be unwieldy in terms of numbers of members and salaries.

*2 It may be presumed that to avoid future litigation and to provide guidance to the counties it would be beneficial to establish some procedure for electing new members of the reapportioned councils. If the counties are reapportioned and the old council members are allowed to continue to serve without new persons being elected to represent these areas, possible suits could be brought questioning, inter alia, ordinances and tax levies passed by these councils.

Without legislation establishing the procedure to be utilized following reapportionment, there would be no statutory authority to cut short a county office's term. However, the old board would in all probability no longer represent the reapportioned districts. Therefore, it is probable that the only alternative would be to require new representatives to be elected from the newly reapportioned districts and have a 'super board' govern the county.

Sincerely,

Treva G. Ashworth
Senior Assistant Attorney General

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