

1980 WL 121151 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 7, 1980

\*1 C. Gordon McBride, Esquire  
Darlington County Attorney  
Post Office Box 966  
Hartsville, South Carolina 29550

Dear Mr. McBride:

In response to your request for an opinion from this Office as to whether or not the residency requirements placed upon candidates for membership on the Darlington County Council (Council) by the provisions of Act No. 874 of 1960 [51 STAT. 2016 (1960)] are in effect, notwithstanding the fact that the Council resolution which was adopted pursuant to [Section 4-9-10\(b\), CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended, does not recite those residency requirements as a part of the method of election for Council members, my opinion is that those requirements are in effect.

[Section 4-9-10\(b\) of the 1976 Code](#) provides in part as follows:

Notwithstanding any other provisions of this chapter, unless otherwise determined by referendum prior to July 1, 1976, the county concerned shall, beginning on that date, have the form of government including the method of election, number, composition and terms of the governing body most nearly corresponding to the form in effect in the county immediately prior to that date, . . . [Emphasis added.]

The South Carolina Supreme Court has heretofore interpreted this language to mean that the identical method of election in effect before the 'home rule' legislation becomes effective in a county is to remain in effect after the 'home rule' legislation becomes effective if the county proceeds under [Section 4-9-10\(b\)](#). See, [Infinger v. Edwards](#) and [Dodds v. Stuckey](#), 268 S.C. 375, 234 S.E.2d 214 (1977). The method of election in effect before the 'home rule' legislation became effective in Darlington County prescribed residency requirements for six of the seven members of the Darlington County Commission pursuant to Act No. 874 of 1960. The fact that those requirements are not contained in the Council resolution filed with the Secretary of State cannot impliedly repeal them so as to render them inoperative; instead, the resolution must be interpreted to refer to the method of election prescribed by Act No. 874 of 1960 and its failure to include the residency requirements prescribed by that Act must be construed as an inaccuracy which does not nullify them. See generally, 1A SUTHERLAND STATUTORY CONSTRUCTION §§ 30.01 et seq. (4th ed. 1972); 2A SUTHERLAND STATUTORY CONSTRUCTION § 54.04 (4th ed. 1973).

With kind regards,

Karen LeGraft Henderson  
Senior Assistant Attorney General

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