

1977 WL 37240 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 8, 1977

\*1 Senator L. Marion Gressette  
State House  
Columbia, South Carolina

Representative John G. Felder  
State House  
Columbia, South Carolina

Gentlemen:

You have requested an opinion from this Office as to whether or not the Calhoun County Board of Commissioners (Commissioners) can presently exercise the powers granted to a county council in the council form of county government by the provisions of Act No. 283 of 1975, the 'home rule' legislation. In my opinion, the Commissioners can exercise the 'home rule' powers and a special election to elect five members of council need not be called prior to the November, 1978, general election.

Section 14-3701(a), CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended (Cum. Supp.), provides that the form of government selected by referendum becomes effective in a particular county immediately upon filing with the Secretary of State a resolution adopting the form of government selected. In addition, the United States Justice Department has required each South Carolina county to submit to it the new form of county government and method of election for its approval pursuant to Section 5 of the 1965 Voting Rights Act. Calhoun County has complied with both of these prerequisites to the exercise of the 'home rule' powers and, accordingly, the Commissioners are now vested with the powers of a county council under the council form of county government. The fact that there are only three Commissioners while the implementing legislation for Calhoun County specifies five council members [see, 59 STAT. (1976)] is not fatal to the Commissioners' exercise of council powers since Section 14-3717(3)(a), CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended (Cum. Supp.), provides that: . . . [c]omposition of councils need not conform to the numerical requirements prescribed for the form adopted until . . . unexpired terms are completed.

With kind regards,

Karen LeCraft Henderson  
Assistant Attorney General

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