

1977 S.C. Op. Atty. Gen. 133 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-162, 1977 WL 24504

Office of the Attorney General

State of South Carolina

Opinion No. 77-162

May 26, 1977

*1 Kelly F. Zier, Esquire
City Attorney
602 West Avenue
P. O. Box 6516
North Augusta, SC 29841

Dear Mr. Zier:

I am in receipt of your recent letter in which you have asked the following questions:

I. The City Council for the City of North Augusta is composed of six (6) members. In accordance with the home rule, all six (6) seats are included in the up coming election. However, three (3) of the individuals who have campaigned for re-election have one (1) year to run on terms to which they were previously elected. In the event that such present council members with time remaining on their terms of office fail to be re-elected, what procedure is to be followed as to the composition of council should such defeated candidates decide not to resign their seats for the remainder of their term.

South Carolina Code of Laws, 1962, as amended, Section 47-29.2 states 'upon initial adoption of or on any change to one of the alternate forms of government, all members of the existing governing body shall continue to serve their elected terms and until their successors are elected and qualified.' Therefore, if a council member fails to win in the election, he would still be able to serve out the term to which he was elected.

II. The council seats for North Augusta are all at large seats. The question has arisen concerning the handling of cross-over votes where such a situation exist. In the event that an individual votes a straight ticket and thereafter elects an individual member of a different political party; [a] for mayor, [b] for council what procedure is to be followed in handling such ballots . . .

[a] If a person votes a straight Democratic Party ticket and then votes for the Republican candidate for mayor, you would count the vote for the Republican mayor and six votes for the Democratic candidates for council.

[b] If a person votes a straight Democratic Party ticket and then votes for one Republican candidate for council, you would count the vote for the Democratic mayor and not count the votes cast for the council races. As the council seats are all at large, it would be impossible to tell which candidates the individual intended to vote for; and, therefore, the votes on the council races would not count. South Carolina Code of Laws, 1962, as amended, Section 23-400.92.

I have designated the candidates as Democratic and Republican only for the purpose of illustration; and, of course, the procedure would be true for all parties offering candidates in the election. I am enclosing with this letter a copy of a previous opinion from our Office concerning cross-over voting which may help clarify this question. [Letter of September 3, 1976—Ashworth to Ellisor.]

Very truly yours,

Treva G. Ashworth
Assistant Attorney General

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