

1977 WL 37429 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 19, 1977

*1 H. N. West, Esquire
Attorney at Law
P. O. Box 716
Moncks Corner, South Carolina 29461

Dear Mr. West:

I have studied the material which Mayor Mann requested you to forward to me in light of the opinions issued by this Office on October 18, 1976, and again on August 1, 1977, concerning the terms of office which the mayor and council members of Goose Creek are to serve. I am still of the opinion that the terms of the present mayor and six council members are two-year terms and that the four-year staggered terms will commence with the candidates scheduled to be elected in the 1978 election. This is so for a number of reasons, to wit:

1. The minutes of the February 10, 1976, meeting of the Goose Creek City Council, at which time third reading of the Goose Creek ordinance adopting the mayor-council form of municipal government and setting four-year staggered terms of office for the mayor and council members was given, reflect that the intent was that the four-year staggered terms 'will not go into effect until the 1978 election.'

2. The Goose Creek ordinance which adopts the mayor-council form of government and sets four-year staggered terms for the mayor and council members provides that the adoption is to be 'effective on July 1, 1976, or as soon thereafter as prescribed by State Law.'

3. At the time that Goose Creek's new certificate of incorporation was issued by the Office of the Secretary of State, i.e., May 6, 1976, the provisions of Act No. 283 of 1975, the 'home rule' legislation, stated that '[t]he form adopted shall become effective at the beginning of the fiscal year following adoption.' 59 STAT. Act No. 283, Part II, Section 6 at 742 (1975). Since the new 'home rule' form of government for Goose Creek was adopted on February 10, 1976, the earliest date upon which that form could have become effective in Goose Creek was either July 1, 1976, if its fiscal year ran from July to July, or January 1, 1977, if its fiscal year ran from January to January. [The provisions of the 'home rule' legislation were subsequently amended to provide that '[t]he form adopted shall become effective upon the issuance of a certificate of incorporation as provided for in Section 47-28 of the 1962 Code.' 59 STAT. Act No. 623, Section 7 at 1663 (1976).]

4. The provisions of the 'home rule' legislation which direct that 'in the first election after. . . adoption of a form of government pursuant to § 5-5-10, one-half of the councilmen may be elected for terms of two years and one-half of the councilmen and mayor may be elected for terms of four years if necessary to establish staggered terms' [§ 5-15-40, CODE OF LAWS OF SOUTH CAROLINA, 1976] [emphasis added] does not mandate that, at the first election following adoption of a form of government, the staggering of terms is to occur regardless of whether or not the new form is yet effective in that municipality. Section 5-5-40 must be read in conjunction with the remainder of the provisions of the 'home rule' legislation and, especially, Section 6 thereof which, at the time the present mayor and council members were elected, provided that the new form would become effective at the beginning of the fiscal year following adoption. Furthermore, the approval required by the United States Justice Department pursuant to Section 5 of the 1964 Voting Rights Act would also preclude a municipality from implementing a change such as from two-year to four-year terms of office for the mayor and council members until that approval was obtained.

*2 I am returning the material which you forwarded to me.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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