

1976 WL 30596 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 12, 1976

*1 Mr. Russell B. Shetterly
Executive Director
South Carolina Association of Counties
Suite 808
SCN Center
Columbia, South Carolina 29201

Dear Mr. Shetterly;

You have requested an opinion from this office as to whether or not the present governing body of each of South Carolina's counties is authorized to pass a resolution providing for the adoption of a new form of county government once that form has been selected by referendum pursuant to Section 14-3701(a) of Act No. 283 of 1975, the 'home rule' legislation.

Section 14-3701(a) provides in part:

. . . The governing body shall by resolution provide for adoption of the form of government selected in the referendum, which shall be filed in the office of the Secretary of State and be effective immediately upon such filing. . . .

The present governing body of each county which either has selected a new form of county government by referendum or plans to do so before July 1, 1976, is the governing body intended by the language hereinabove quoted to be the one to provide by resolution for the adoption of the new form and to file that resolution with the Secretary of State inasmuch as the new form of government and, consequently, the new governing body will not come into existence until that resolution has been passed and filed. Moreover, since the new form is effective immediately upon its being filed with the Secretary of State, the members of the present governing body can then proceed with other duties imposed upon them by the Act; for example, they can then act pursuant to Section 3(1), (2) and (3) of the Act to 'insure an orderly transition from existing forms of government' by providing for the composition and election of the new governing body. Additionally, I am enclosing herewith a copy of a recent opinion which touches upon the question you have raised.

You also ask if the governing body can take action pursuant to Section 14-3701(a) before the United States Department of Justice has approved the new form of government and the method of election under the authority granted to it by Section 5 of the 1965 Voting Rights Act. My opinion is that the resolution adopting the new form of government can be passed and filed before the Justice Department acts; in fact, such action on the part of the county might very well indicate that it has performed all acts necessary to implement the provisions of the 'home rule' legislation and, therefore, motivate the Department to grant its approval earlier.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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