

1976 S.C. Op. Atty. Gen. 68 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4257, 1976 WL 22877

Office of the Attorney General

State of South Carolina

Opinion No. 4257

February 11, 1976

***1** Should Laurens County voters select county government Form 2, Council-Supervisor, the existing office of Laurens County Supervisor would, at the time the adopted form becomes effective, assume the full powers of a Form 2 Supervisor.

TO: The Honorable David S. Taylor
Senator
District No. 2,
Office No. 5
Laurens County

QUESTION PRESENTED:

Whether the existing office of Laurens County Supervisor and its incumbent would assume for the balance of the incumbent's term the powers granted to a Form 2 Supervisor, in the event that Form 2 becomes effective in Laurens County.

AUTHORITIES:

Act No. 283 of 1975 (Home Rule)

Act No. 910 of 1970

Act No. 403 of 1969

DISCUSSION:

Act No. 403 of 1969 abolished the then Laurens County Board of Commissioners and established the Laurens County Council. The office of county supervisor was retained by that Act but was divested of its authority as chairman of the governing board. Act 910 of 1970 amended Act 403 of 1969 so as to provide that the county supervisor 'shall be an ex officio member of county council without voting privileges.'

Act No. 283 of 1975 (Home Rule Act) states in Section 14-3701(e) that:

All members of the governing bodies of the respective counties serving terms of office on the date on which a particular form of county government becomes effective shall continue to serve the terms for which they were elected or appointed and until their successors are elected or appointed and have qualified.

Act No. 283, Section 3, states in part as follows:

After one of the forms of county government, other than the board of commissioners form, provided for in this act has been adopted and becomes effective, to insure an orderly transition from existing forms of government, the following procedures shall be initiated and carried out by each county council:

...

(3) Take all other necessary actions to implement the form of government adopted and the transition to that form including but not limited to:

(a) a schedule for the election of council members and supervisors where appropriate based on the expiration of terms of persons serving unexpired terms when a new form of government becomes effective. Composition of councils need not conform to the numerical requirements prescribed for the form adopted until such unexpired terms are completed.

Persons serving terms may seek election to the council and assume office if elected prior to the expiration of their terms. (emphasis added)

The question addressed in this Opinion is not free from doubt. However, the language cited above states that the Laurens County Supervisor, presently a member of county council, ex office, will continue to serve the term for which he is elected. The above language also directs that once a Form 2 becomes effective in a county, the council shall schedule the election of a Supervisor based on the expiration of the term of the incumbent Supervisor, if any. [§ 3(3)(a)]

*2 At such time as Home Rule becomes effective in a given county, incumbent councilmen assume all the powers that Act No. 283 accords to the Form effective for that county, notwithstanding the fact that the council to which they were elected possessed lesser powers prior to Home Rule. The same rationale applies to vest an incumbent Supervisor with the full powers provided by Form 2, in the event that Form 2 becomes effective in his county.

The alternative would be a situation wherein the people of Laurens County, should they select by referendum the Supervisor Form, would be denied a true Form 2 Supervisor Form until such time as the term of the incumbent supervisor expires. That construction of the Act would in effect run counter to the voters' mandate by causing a continuation of a Form 1 county government until such time as the incumbent supervisor's term expires.

CONCLUSION:

While the matter is not free from doubt, it is the opinion of the undersigned that should Laurens County voters effect Form 2, the incumbent Laurens County Supervisor would, at the time the adopted form becomes effective, assume the full powers of a Form 2 Supervisor.

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