

1978 WL 34658 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 16, 1978

*1 Mr. Julian Richardson
Chairman
Horry County Council
P. O. Box 36
Conway, South Carolina 29526

Dear Mr. Richardson:

You have requested an opinion from this Office on several matters relating to Horry County and I shall respond to them in the order in which you have posed them:

1. While the United States Justice Department has interposed an objection to the at large method of electing the members of the Horry County Council (Council) pursuant to Section 5 of the 1965 Voting Rights Act and, therefore, the change effected thereby cannot be legally enforced, a three-judge federal district court has held in McCray, et al. v. Hucks, et al. (C.A. No. 76-2476) that the present Council is:

... to continue in office pending a determination by the District Court for the District of Columbia as provided for in [42 U.S.C. § 1973c](#). Order dated March 22, 1977, at 4.

I am enclosing a copy of that order for your convenience. In effect, the three-judge court's order has nullified the legal effect of the Justice Department's objection and permits the Council to function under the council-administrator form of county government on an interim basis until the federal district court in Washington, D. C., rules in the pending declaratory judgment action.

2. [Section 4-9-100, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, permits a county council to set the salary of its members by ordinance once the selected form of 'home rule' government becomes effective in a county. After that initial determination, any salary change does not become effective until the council members elected at the next general election take office. The provision is silent as to the setting of the council chairman's salary specifically but, assuming that the setting of the salaries 'for its members' includes the setting of the salary of the chairman, then the same delay in effecting a salary change would apply to the chairman's salary once it has been set by ordinance. My understanding, however, is that neither the chairman's nor the members' salaries have been initially set by ordinance although they have been budgeted at a certain amount. If this is so, then the Council is free to enact an ordinance setting salaries at amounts different from past amounts and such an ordinance would be effective immediately upon its passage.

3. According to Act No. 960 of 1964 [53 STAT. 2202 (1964)], the chairman of the former board of commissioners of Horry County was to be elected county-wide for a four-year term. [Section 4-9-90, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, provides in part as follows:

In those counties in which the chairman of the governing body was elected at large as a separate office prior to the adoption of one of the alternate forms of government provided for in this chapter, the chairman shall continue to be so elected.

Pursuant to this provision, Horry County is to continue to elect the chairman of its county governing body at large as a separate office under the council-administrator form of government and, in fact, Act No. 845 of 1976 [59 STAT. 2415 (1976)] so provides. The language hereinabove quoted does not require that the chairman retain the same term of office as he had in the past but rather that he continue to be elected at large as a separate office if he had been so elected in the past. To conclude otherwise could result in council members serving two-year terms while the chairman served a four-year term; the General Assembly undoubtedly did not mean to so limit its own power (since it makes at least the initial determination as to terms of office) and, accordingly, did not by [Section 4-9-90](#) preserve the term of a chairman previously elected at large as a separate office but, instead, preserved only the manner of electing him.

*2 4. In response to your inquiry as to the duties of the chairman of the former board of commissioners, my opinion is that if the provisions of Act No. 283 of 1975, the 'home rule' legislation, have vested those duties in either the council or the administrator in the council-administrator form of government, the Council chairman cannot perform them. I am enclosing copies of two previous opinions issued by this Office concerning a council chairman's duties as they relate to duties given to different county officials by the 'home rule' legislation. This question has come up repeatedly in the case of supervisors who are functioning in non-supervisor forms of government. Clarendon County Council has instituted a declaratory judgment action to determine the role of its supervisor in the council-administrator form of government. The decision should have some relevance to Horry County since the chairman of the former board of commissioners of Horry County performed functions similar to those of the Clarendon County supervisor. Marion S. Riggs is the Clarendon County Attorney and you might want to contact him about that litigation.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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