

1979 WL 42985 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 8, 1979

*1 John Patrick Henry, Esquire
Horry County Attorney
211 Beatty Street
Conway, South Carolina

Dear Mr. Henry:

An opinion has been requested from this Office on the question of when the change in the membership of the Horry County Council directed by the South Carolina Supreme Court in the recent action entitled Van Fore, et al. v. Cooke, et al. would become effective.

The opinion of the Supreme Court in the above-noted decision was filed on May 3, 1979. Under Rule 17 of the Supreme Court, the losing party in an appellate proceeding may petition the Court for a rehearing of the appeal within ten (10) days of the filing of the opinion, the day of filing being excluded, during which period the sending of the remittitur to the Court below is delayed. Upon the proper filing of a petition for rehearing, the sending of the remittitur, which is noted in Section 1, Rule 17, to the Court below is stayed. The purposes of the ten day delay in the sending of the remittitur and the stay mandated during rehearings are obviously intended to preserve and protect the status quo of the position of the parties until the proceedings before the Supreme Court are exhausted or until the time for these proceedings expires. See 58 C.J.S. Appeal and Error, § 1955. With regard to cases such as the present one, these provisions also avoid the undesirable situations where the Court would have to revoke the implementation of its opinion by the prevailing party where a petition for rehearing is filed or where it reverses its original opinion after the completion of rehearing proceedings.

Therefore, it is the opinion of this Office that the change in the membership of the Horry County Council directed by the Supreme Court should not become effective at least until the period for the filing of a petition for rehearing expires if no such petition is filed, or if a petition is so filed, until the Supreme Court removes the stay of the sending of the remittitur to the Circuit Court of Horry County for entry upon the records of that Court. See 58 C.J.S., *supra*; Goodson v. Lehmon, 35 S.E.2d 523 (N.C. 1945); [Article 5, § 5 of the South Carolina Constitution](#); [§ 15-35-10 et seq., Code of Laws of South Carolina](#), 1976.

It also should be noted that during the interim between the filing of the opinion of the Supreme Court and the date on which the change in the membership of the Horry County Council is effected, the present members of the Council may continue to exercise their duties as de facto officers. This doctrine, which rests upon considerations of public policy and necessity is well-established in [South Carolina. McLeod v. Court of Probate of Colleton County](#), 266 S.C. 279 (1976); [Morris v. Scott](#), 258 S.C. 435 (1972); [Heyward v. Long](#), 178 S.C. 351 (1935).

Sincerely yours,

James M. Holly
State Attorney

1979 WL 42985 (S.C.A.G.)