

1979 WL 43557 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 4, 1979

*1 Edward P. Guerard, Jr., Esquire
Attorney at Law
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Charleston, SC 29402

Dear Mr. Guerard:

In response to your request for an opinion from this Office regarding the effective date of an anticipated change in the form of municipal government for the City of the Isle of palms from the mayor-council form to the council-manager form, I agree with your conclusion that [Section 5-5-60, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended, keeps in office until the expiration of their respective terms those members of a municipal governing body who are in office at the time that a change in the form becomes effective by providing in part as follows:

... on any change to one of the alternate forms of government, all members of the existing governing body shall continue to serve their elected terms and until their successors are elected and qualify.

Note should be taken of the fact, however, that, while the members of a governing body in office when a change in form becomes effective continue to serve out their respective terms of office, they exercise the powers and perform the duties as prescribed for the new form of government. That is, in the case of the Isle of Palms, the mayor will continue to serve out his term but he will do so with the powers and duties vested in him under the council-manager form. See, e.g., §§ 5-13-20 and 5-13-30, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended. I am enclosing a copy of a lower court order now on appeal to the South Carolina Supreme Court regarding the analogous question of the role of the county supervisor who serves out his term of office under the council-administrator form of county government. As you will note, the lower court concluded that the county supervisor retains only the powers and duties not expressly granted to another official in the council-administrator form, and I think that the reasoning used therein is applicable here.

Finally, you should note that, notwithstanding the fact that the proposed ordinance recites that the new form, if approved, will become effective on January 1, 1980, the United States Just Department has taken the position that all South Carolina counties and cities must submit any change in method of election or form of government to it for preclearance pursuant to Section 5 of the 1965 Voting Rights Act before the change can be effected.

With kind regards,

Karen LeCraft Henderson
Senior Assistant Attorney General

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