1978 WL 34748 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
March 7, 1978

***1** Howard P. King, Esquire
Sumter County Counsel
Post Office Box 2038
Sumter, South Carolina 29150

Dear Mr. King:
Enclosed is a copy of the opinion issued to Richland County concerning whether or not Section 4-9-10(c), CODE OF LAWS OF SOUTH CAROLINA, 1976, authorizes a referendum to change the method of electing members of a county governing body from the initial method selected. My understanding from Representative Jean Toal is that she is planning to introduce legislation which will cure the defect in that Section. Irrespective of the correctness of that opinion, however, Section 4-9-10(c) authorizes a referendum only after the initial form of government selected has been in effect for two (2) years. Therefore, a Section 4-9-10(c) referendum would not be available to Sumter County until its form of government has been in effect for two (2) years.

As far as Mr. Eckstrom's opinion is concerned, I discussed the matter with him before he issued it and I agree with his conclusion. While it is true that the United States Justice Department cannot 'require' the single member district method of election for Sumter County Council members, it is equally true that that Department can object to and thus prevent (if unchallenged) the further use of the at large method of election presently applicable to the Council members. This being so, the only alternate method of election available to Sumter County under the provisions of Act No. 283 of 1975, the 'home rule' legislation, is the single member method. There is no express statutory authority for a county to set district lines and, while neither is there any express statutory authority for the General Assembly to set the lines in such circumstances, it, unlike the county, does have plenary powers except when restricted by the State Constitution. The State Constitution has been interpreted by the South Carolina Supreme Court to permit a certain degree of latitude during the transition period before 1980 vis à vis the legislature's participation in local matters and, consequently, our office has viewed the setting of district lines by the legislature as not having been restricted by the Constitution during this period. See generally, Duncan v. The County of York, 228 S.E.2d 92 (1976). Finally, I understand further from Representative Toal that legislation is being introduced expressly authorizing the legislature to delineate district lines in the event that the Justice Department's action necessitates such action.
With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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