1978 WL 34757 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
March 9, 1978

***1** Honorable Robert R. Woods
Member
House of Representatives
District No. 109
Post Office Box 2115-A
Charleston, South Carolina 29403

Dear Representative Woods:
You have requested an opinion from this Office as to whether or not the Charleston County Council (Council) becomes vested with the powers granted it by the provisions of Act No. 283 of 1975, the 'home rule' legislation, before the United States Justice Department, acting pursuant to Section 5 of the 1965 Voting Rights Act [42 U.S.C. 1973c], approves the method of electing the members of the Council. In my opinion, once the Justice Department approves the form of government, notwithstanding its lack of approval of the method of electing Council members, the Council becomes vested with the 'home rule' powers.

Section 4-9-10(b), CODE OF LAWS OF SOUTH CAROLINA, 1976, provides in part:
Notwithstanding any other provisions of this chapter, unless otherwise determined by referendum prior to July 1, 1976, the county shall, beginning on that date, have the form of government . . ..

According to this provision, then, Charleston County was to have the council-administrator form of government beginning on July 1, 1976, since no referendum was held before that date. See generally, Infinger v. Edwards, 234 S.E.2d 214 (1977); see also, Dodds v. Stuckey, 234 S.E.2d 214 (1977). In addition to the State law provision, however, the Justice Department has required each county in South Carolina, irrespective of whether a referendum to choose a form of government and/or a method of election be held or not, to submit its form of government and its method of election to it for approval before any changes made by the 'home rule' legislation are implemented in that county. My understanding is that the Justice Department has approved a form of government for several counties while, at the same time, it has disapproved the method of electing the county council members in those counties. In such a case, my opinion is that the county becomes vested with the 'home rule' powers at that point by virtue of the fact that the State law provisions do not delay the vesting of 'home rule' powers until the first county council elected after the form of government and method of election are determined. In other words, the 'home rule' powers vest in the county council members holding office on the date that the Justice Department approves the form of government, notwithstanding the fact they were not elected pursuant to the 'home rule' method of election. See, § 4-9-10(a) and (b), CODE OF LAWS OF SOUTH CAROLINA, 1976.

Whether or not this fact situation applies to Charleston is a matter which is not known to this Office because the submission of Charleston County's 'home rule' material to the Justice Department was made by Charleston County officials. If this fact situation does apply to Charleston, that is, if the Justice Department has approved Charleston County's form of government but not its method of election, then the present Council has the 'home rule' powers. If, however, the Justice Department has approved neither the form of government nor the method of election for Charleston County, then the Council should not yet exercise the 'home rule' powers. This conclusion is based upon the premise

that the Justice Department's jurisdiction does in fact extend to the approval of forms of county government which, I understand, may be the subject of litigation with relation to Charleston County.
With kind regards,

***2** Karen LeCraft Henderson
Senior Assistant Attorney General

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