

1975 S.C. Op. Atty. Gen. 43 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 3971, 1975 WL 22269

Office of the Attorney General

State of South Carolina

Opinion No. 3971

February 18, 1975

***1 In Re: Vacancy—Orangeburg City Council**

The Honorable C. Walker Limehouse

City Attorney

Post Office Box 627

Orangeburg, South Carolina 29115

Dear Mr. Limehouse:

You have inquired as follows:

‘On February 7, 1975, the Honorable C. B. Goodman, councilman, died leaving an unexpired term of approximately two and one-half years. Code Section 47–651 provides:

“In the event of a vacancy in the City Council for any cause, the vacancy shall be filled by a majority of the remaining members for the unexpired term only.’

‘I have been asked to determine whether an advisory referendum may be held for the advice and guidance of the remaining members of City Council in filling the vacancy and if so whether such advisory referendum may be postponed until the next city election to be held in September 1975.

‘Code Section 47–651 was amended in 1973 for the purpose of staggering the terms of the four councilmen, and in September of 1975 there will be a regular election for the purpose of electing two councilmen to serve four-year terms.

‘If, in your opinion, a delay until the September election would be contrary to the spirit and intent of 47–651, would it be proper to have an advisory referendum within—say forty-five days.’

In reply thereto, I advise that, in my opinion, there is no authority for holding an advisory election and that any expenditure of public funds for such an election would be an invalid expenditure. The basis for this conclusion is set forth in an opinion which was issued on August 1, 1963 (1963 Attorney General's Opinions 129), a copy of which is herewith enclosed.

In my opinion, an election can only be conducted at public expense when authority exists therefor by virtue of statute or constitutional provision.

Very truly yours,

Daniel R. McLeod

Attorney General

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