

1975 WL 29254 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 9, 1975

**\*1 In Re: Act No. R-396—South Carolina Home Rule Act**

Honorable J. Stanley Pottinger  
Assistant Attorney General  
Civil Rights Division  
Department of Justice  
550 11th Street, N.W.  
Washington, D. C.  
ATTENTION: Mr. Gerald Jones

Dear Mr. Pottinger:

Your letter of August 28, 1975, has the effect of enabling counties and cities to hold a referendum under the form of government to be adopted by a county or municipality of South Carolina in accordance with the provisions of Act R-396 of 1975 relating to establishment of Home Rule for political subdivisions.

I direct your attention to the concluding two sentences of the second paragraph of your letter, which read:

‘In addition, those counties which do not conduct an election to change the form of government will be assigned a form of government according to the provisions of Section 14-3701(b) of the Act. This assignment of such forms of government also constitutes a change which is subject to the preclearance requirements of the Voting Rights Act of 1965.’ (Emphasis added.)

Some counties may fail to hold a referendum, and under the provisions of the subsection of the Act cited in the quoted portion above, they could then be assigned a form of government which is precisely the same as that under which they now operate. It is also possible that some municipalities may elect to retain their same form of government. Should either of these events occur, there may be no modification of an existing form of government for such counties and cities, either with respect to powers, the number of members of the governing body, or in any other respect. In such event, it would not appear that such a transition would be subject to the preclearance requirements of the Voting Rights Act. It is recognized that if such changes as additional members of the governing body or an other alteration should occur, the preclearance requirements would have to be complied with. A literal reading of the underlined portion above quoted would indicate that any transition, even if it involved no change, would be subject to preclearance requirements.

I should like your clarifications in this respect of your letter of August 28, 1975.

Very truly yours,

Daniel R. McLeod  
Attorney General

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