

1975 S.C. Op. Atty. Gen. 246 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4196, 1975 WL 22493

Office of the Attorney General

State of South Carolina

Opinion No. 4196

November 21, 1975

*1 Mr. Joseph S. Mendelsohn

Secretary

Commissioners of Election for Charleston County

Post Office Box 633

Charleston, South Carolina 29402

Dear Mr. Mendelsohn:

Thank you for your letter of November 6, 1975, asking what effect, if any, the Home Rule Act of 1975, would have on the appointment of the Commissioners.

It is my opinion that the Act will effect no change in the functioning or structure of that body. Section 14–3714 provides, in part, that the county council will not have any new appointive powers with regard to existing commissions and boards whose members are appointed pursuant to general law, as is the case with county election commissions throughout the State. See, 54 STAT. Act No. 971, Part I, Art. 1, subdivision 10 at 2343 (1966); 55 STAT. Act No. 336 at 3120 (1968). Moreover, Section 3 of the Act provides, in part, that all agencies and offices of county government and laws related thereto are to remain in full force and effect until at least January 1, 1980, unless theretofore repealed by the General Assembly. After that date, the county council is empowered to enact ordinances which may supersede special laws relating to that county. As you are aware, Section 14–3701(a) of the Act does require the county election commission to conduct the referendum, if called, to determine a form of government or a method of election for the members of the new county governing body or both.

You inquire also as to the terms of office of the Commissioners and whether they automatically dissolve upon the conclusion of their duties pertaining to the 1976 general election.

The Commissioners are appointed at least thirty days prior to any general or special election provided for in Section 23–391 of the Code. That section provides that general elections shall be held on the first Tuesday following the first Monday in November in each even-numbered year.

The terms of all officers must be for fixed periods and, in my opinion, the term of office of Commissioners of Election is referable to the period fixed in Section 23–391 and is thus established at two years.

The Commissioners, in my opinion, hold office until their terms have expired and at that time vacancies will exist in the offices if they have not been replaced, in the sense that the appointive procedures provided in Section 23–400 may then be followed. The Commissioners must, in my opinion, continue in office until their successors are appointed and have qualified. [Rogers v. Coleman](#), 245 S.C. 32, 138 S.E.2d 415, and [Bradford v. Byrnes](#), 221 S.C. 255, 70 S.E.2d 228. Therefore, the Commissioners continue to hold office until such time as their successors are appointed and have qualified and are fully empowered to handle any and all elections that may occur during their incumbency. They do not automatically dissolve and cease functioning for the reasons set forth in the two cases above cited.

With best wishes,

Cordially,

*2 Daniel R. McLeod
Attorney General

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