

1974 WL 27663 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 11, 1974

*1 Robert W. Shand, Esquire
Shand and Lide
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954 W. Carolina Avenue
Hartsville, South Carolina 29550

Dear Mr. Shand:

Your letter of January 8, 1974, has been referred to me for answer. Your letter poses two questions:

1) Does Act No. 1600, 57 STAT. 3130 (1972), which provides for the terms of office for the mayor and council under the council-manager type of government for the City of Hartsville take away from the Legislature its right to provide in Act No. 1601, 57 STAT. 3131 (1972) that the city recorder does not have to be an attorney;

2) Does the fact that Act No. 1600, 57 STAT. 3130 (1972) did not take effect until after the City of Hartsville had changed to the council-manager type government effect the validity of the present government?

Actually, a third question arises in connection with Acts. No. 1600 and 1601, the question being whether, in light of Art. III, § 34 and old Art. VIII, § 1 of the Constitution of South Carolina (1895), both acts might be considered special legislation and, therefore, unconstitutional. This question, however, is one for the courts to decide.

In answering the two questions you pose, I make the following assumptions. First, I assume both acts are constitutional, and second, Hartsville adopted the council-manager form of government pursuant to §§ 47-691, et. seq., CODE OF LAWS OF SOUTH CAROLINA (1962).

As to the first question, Act. No. 1600 varies the terms of office as provided in § 699.22, CODE OF LAWS OF SOUTH CAROLINA (1962). This Act in no way effects the Legislature's plenary power to regulate the terms or qualifications for other offices within the municipal government structure. Thus, the Legislature had full power to enact Act No. 1601.

Since the Legislature has plenary power with regard to establishing municipal governments, it may, at any time it deems proper vary the term of a municipal office or even abolish the office during the middle of a term. Therefore, there is nothing to prevent the Legislature from varying the terms of the Hartsville mayor and councilmen a month or more after they took office.

I hope this has sufficiently answered your questions. If this office may be of further assistance, please do not hesitate to contact me.

Yours very truly,

M. Elizabeth Crum
Staff Attorney

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