

1974 WL 28087 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 5, 1974

***1 Re: Special Election for the City of Myrtle Beach, South Carolina**

Larry E. Gates, Jr., Esquire
Solomon and Gates
Attorneys at Law
Post Office Box 2253
Myrtle Beach, SC 29577

Dear Mr. Gates:

Attorney General McLeod has assigned your letter of December 2, 1974, to me for answer. In your letter you request an opinion as to when the election for the two (2) new members for the City council have to be held; specifically you request an opinion as to the possibility of postponing the special election until the time of the General Election in May, 1975.

In Cameron v. The City of Myrtle Beach, South Carolina, Opinion No. 19908, November 13, 1974, the Supreme Court, in a per curiam order adopted the lower court's order with such deletions and changes as it deemed necessary. In Cameron, the Court found specifically:

A special election at this time is authorized by Chapter 7 because of the fact that two new council seats have been created which are now vacant. Section 47-699.26 requires a special election to fill a vacancy if the vacancy occurs more than 120 days prior to the next city general election. The next such election under the provisions of the Uniform Act will be in May of 1975 when the terms of Councilmen Cook and Farlow expire. Thus a special election to fill the two vacancies created by the adoption of the Council-Manager form of government must be called. One of these Councilmen should be elected for a term to end when his successor is elected in May, 1975 and thereafter qualifies and the other should be elected for a term to end when his successor is elected in May, 1977 and thereafter qualifies.

Section 47-699.26, CODE OF LAWS OF SOUTH CAROLINA (1962) (as amended) provides for the filling of vacancies where a vacancy occurs in the Council-Manager form of government.

Vacancies in the offices of mayor or council shall be filled by special election if the vacancy occurs more than one hundred twenty days prior to the next city general election for the unexpired portion of the term. If the vacancy occurs less than one hundred twenty days before a city general election, the vacancy shall be filled at the general election for the unexpired term as provided by law.

In using the word 'shall' the Legislature made it mandatory that a special election be called any time a vacancy occurs more than 120 days prior to the next General Election. See, Blalock v. Johnston, 180 S.C. 40 (1936).

In this instance the two (2) vacancies have occurred more than 120 days prior to the next General Election. Looking to the mandatory language of § 47-699.26, the Mayor and City Council have no choice but to call a special election to fill the two (2) vacancies created by the adoption of the Council-Manager form of government.

Yours very truly,

M. Elizabeth Crum

Assistant Attorney General

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