

1973 WL 26563 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 2, 1973

\*1 Mr. W. Jerry Fedder  
County Attorney for Oconee County  
Box 791  
Seneca, South Carolina 29678

Dear Mr. Fedder:

Thank you for your letter of December 20, 1972, concerning the effect which Section 5 of Act No. 555, approved July 7, 1971, will have upon the council form of government for Oconee County.

Apparently, the following sequence of events has taken place with respect to the creation of a county council form of government.

Act No. 1130 was approved on the 23rd day of April, 1970, and provided for a council, four of whom were to be elected in the general election of 1974 for terms to begin January 1, 1975. Apparently, the Act contemplated that appointed members serve initially with terms to begin January 1, 1973. The Act provided also that the Oconee County Board of Commissioners should be abolished as of January 1, 1973. This Act was subject to approval by the voters in the general election of 1970.

Act No. 555, approved July 7, 1971, provides for a council of five members to be elected in the general election of 1974 for terms beginning January 1, 1975. Section 5 of the Act abolished the duties of the Oconee County Board of Commissioners and devolved such duties upon the County Council as of January 1, 1973. The Act was to be voted upon in the general election of 1972 in a referendum and I assume that it has received the approval of the voters.

It thus appears that a county council form of government was created in 1970, but that its provisions were repealed before they could become effective in January, 1973. The repeal was accomplished by Act No. 555 of 1971, which provides for the beginning of terms of council members on January 1, 1975, whereas Section 5 abolishes the Board of Commissioners and devolves its duties upon a board whose terms have not yet commenced and who, in fact, have not yet been elected.

This is my understanding of the factual circumstances and I will appreciate your confirmation as to whether this assumption is correct or not.

If this is the state of facts, it is my opinion that the old county governing body has never been superseded by another entity and that it will continue to hold office and to function de facto until the successors of the members have been elected or appointed and have qualified. This seems to be the implicit holding of [Rogers v. Coleman](#), 245 S.C. 32, which dealt with a board of registration whose members attempted to resign and abandon office.

With best wishes.

Very truly yours,

Daniel R. McLeod  
Attorney General

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