

1973 S.C. Op. Atty. Gen. 369 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3678, 1973 WL 21129

Office of the Attorney General

State of South Carolina

Opinion No. 3678

December 20, 1973

***1 Notice of a Referendum on the Council-Manager form of municipal government published four weeks prior to November 6, 1973, was sufficient Notice to satisfy the requirement of Section 47–696, Code of Laws, 1962.**

Attorney-at-Law
Myrtle Beach, S. C.

You have requested the opinion of this Office, as City Attorney for the City of Myrtle Beach, as to the validity of the referendum held November 6, 1973, pursuant to § 47–691, *et seq.*, CODE OF LAWS OF SOUTH CAROLINA (1962). Specifically, you desire an opinion as to whether the notice published in a newspaper of city and county wide circulation, but not published pursuant to any directions of the Mayor or City Council, is sufficient to satisfy the requirement of § 47–696, CODE OF LAWS OF SOUTH CAROLINA (1962). Section 47–696 provides:

Notice of all such elections shall be published at least three weeks in advance in a newspaper of general circulation in the city and county in which such election is to be held. . . . The mayor and city council shall appoint the managers, prepare the boxes and ballots, receive the returns and declare the results of the election. All elections shall be conducted as nearly as practicable in accordance with the provisions of the general law regulating special elections in this State. If a majority of the votes cast shall be a ‘Yes’, the mayor and council shall declare that the city has adapted the form of government provided for in this chapter. If there be not a majority of the ballots with the word ‘Yes’ thereon, the mayor and the council shall declare that such form of government has been rejected.

The question of what constitutes sufficient notice of a pending election has been considered by the South Carolina Supreme Court on several occasions. One of the leading cases in this area is *Phillips v. City of Rock Hill*, 188 S.C. 140, 188 S.E. 604 (1938), 119 A.L.R. 656 (1939) annot. (all cites are to 188 S.C. 140). The *Phillips* case holds ‘. . . that where special elections are held there must be a substantial compliance with the pertinent provisions of law thereunto relating. ‘*Phillips*, *supra* at 144. The statute interpreted in *Phillips*, § 7372, CODE OF LAWS OF SOUTH CAROLINA (1932), provides:

. . . notice of the election shall be deemed sufficiently given if there be published twice in a newspaper printed in such city or town, once at least twenty (20) days before the election and once within the period of fifteen (15) days before the election. . . .

The *Phillips* court treats the language ‘shall be deemed sufficiently given’ to render the publication requirements directory and not mandatory. Similarly, § 47–696 is couched in precatory language—‘as nearly as practicable in accordance with the provisions of the general law regulating special elections in this State’—which, following the reasoning of *Phillips*, renders the statute's publication requirements directory.

The statute here does not lay down a specific mandate but on the contrary merely directs the manner in which notice could be given. It is directory and not mandatory and any method of giving notice of the election which could reasonably be held to have served the purpose for which the notice was intended would likewise, as a matter of law, be held sufficient with the limitation, of course, that the manner, method and time would not be such as to affect the fairness of the election. *Phillips*, *supra* at 145. (Emphasis supplied.)

*2 Although the Myrtle Beach City Council did not cause it to be published, notice of the upcoming referendum was published in the form of a news article with a two column headline on the front page of the Sun-News, a Horry County newspaper having a circulation of between 7200 and 7400 and county wide delivery on October 4, 1973.

The Myrtle Beach City Council voted unanimously Tuesday night to hold a referendum Nov. 6 on the future form of the city's government. Elections for mayor's office and two city council seats will also be held that date. The question to go before the city's 5000 registered voters is 'Shall the city of Myrtle Beach adopt a Council-Manager form of government?' 'Sun-News', Vol. 23, No. 50, Myrtle Beach, October 4, 1973.

This notice was published four weeks prior to the November 6, 1973, election and § 47-696 only requires that the notice be published at least three (3) weeks prior to the election. Furthermore, an election will be sustained, notwithstanding the want of the usual proclamation or other prescribed notice, or defect in giving the required statutory notice, if the electors had general knowledge of it, and a reasonable number of votes were polled, so that it may be considered that the election reflects the popular will, especially when held on the regular day ordained by law, in the customary place and by the proper officials. 3 *McQuillin on Municipal Corporation*, § 12.12 at 103-104 (1963).

It should be pointed out that the referendum in question was held on the regular day for elections, 'in the customary place and by the proper officials.'

For the above reasons, it is felt that there has been sufficient compliance with § 47-696, CODE OF LAWS OF SOUTH CAROLINA (1962) and that, therefore, the referendum held November 6, 1973, was validly held.

Therefore, as noted in the Opinion to you of November 16, 1973, the effect of this referendum is to supercede the commission form of government. Consequently, pursuant to § 47-694, Code of Laws of South Carolina (1962), a new election for a mayor and six (6) councilmen has to be held.

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