



HENRY McMASTER  
ATTORNEY GENERAL

October 10, 2006

R. Allen Young, Esquire  
Mount Pleasant Town Attorney  
Post Office Box 745  
Mount Pleasant, South Carolina 29465

Dear Mr. Young:

In a letter to this office you questioned the basis for opinions of this office that have concluded that the terms of municipal council members may be shortened in certain circumstances. In particular, an opinion of this office dated December 8, 2005 to you dealt with the question of whether the Town of Mount Pleasant could shorten or extend the terms in office of certain council members in order to transition to a different election date.

As noted in the December, 2005 opinion, pursuant to S.C. Code Ann. § 5-15-40, "[t]he mayor and councilmen of each municipality shall be elected for terms of two or four years." That opinion quoted a June, 2003 opinion which noted that "...as the General Assembly has provided only that mayors and municipal council members shall have terms of two or four years, a municipality would not be authorized to set by ordinance a term of office other than two or four years."

However, the December, 2005 opinion also quoted an earlier opinion of this office dated June 6, 2003 which stated that

...this office has issued previous opinions addressing the question of whether municipalities are authorized to change election dates when the effect would be to extend (or reduce) the terms of office of incumbent officials. We have concluded that, as long as the exercise of this power is reasonable, for a public purpose (not for the benefit of council members and the mayor) and is precleared with the Department of Justice before the changes are implemented, municipalities generally possess this authority.

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Several other prior opinions have reached a similar conclusion. See, e.g., Ops. Atty. Gen. dated March 13, 2006; March 9, 2000; November 30, 1989; July 11, 1980.

As to the basis for such conclusion with regard to the authority to change election dates, as noted in the December, 2005 opinion, S.C. Code Ann. § 5-15-50 provides that “[e]ach municipal governing body may by ordinance establish municipal ward lines and the time for general and special elections within the municipality.” (emphasis added). Reference was made in that opinion to the June 6, 2003 opinion referenced above which concluded that pursuant to such provision, a municipality would be authorized to change the date of its elections by ordinance. That opinion stated that

[a]s Section 5-15-50 is not limited to the initial setting of election dates, it appears clear that the Section would authorize a municipality to change the date of its elections by ordinance. To interpret Section 5-15-50 otherwise would impose a limitation not provided for by the General Assembly. It is obvious that a municipality cannot exercise its authority to change the date of an election without also effecting the terms of some of the incumbent municipal officers.

Reference was also made in the December, 2005 opinion to the above-referenced November 30, 1989 opinion which had determined that the conclusion that a municipality could extend the time of an election so as to extend the term of an elected official’s office would also apply equally to the shortening of a term of office.

The March, 2006 opinion noted above referred to Article VIII, Section 9 of the State Constitution which states that “[t]he structure and organization, powers, duties, functions, and responsibilities of the municipalities shall be established by general law.” Section 5-15-50 is an example of that authority granted by general law. The referenced July 11, 1980 opinion concluded that pursuant to the referenced constitutional provision and Section 5-15-50, a municipality had the authority to extend the date of municipal elections. As noted in the prior opinions, a municipality likewise has the authority to shorten the terms of office by changing the date of an election. Such power would similarly be based upon these same grants of authority. See: Op. Atty. Gen. dated March 9, 2000.

Therefore, in answer to your question as to the basis for our opinions that have concluded that the terms of municipal council members may be shortened in certain instance, Section 5-15-50 grants a municipal governing body the authority to establish the time for general and special elections. By such grant of authority, a municipality would be authorized to change the date of its elections by ordinance. That change in some situations may shorten the terms of a council member.

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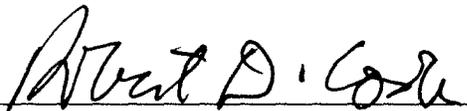
With kind regards, I am,

Very truly yours,



Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General