



HENRY McMASTER
ATTORNEY GENERAL

March 17, 2010

Kenneth E. Gaines, Esquire
Columbia City Attorney
P.O. Box 667
Columbia, South Carolina 29201

Dear Mr. Gaines:

We received your letter requesting an opinion of this Office concerning the implementation date to change the form of government in the City of Columbia. You asked whether the implementation date would be July 1, 2010 or July 1, 2014 "if favorable passage of a referendum occurred on or after July 1, 2010[.]" As noted in your request, prior opinions of this Office have addressed the question of when implementation takes place for a change in the form of municipal government. This opinion will address those and other prior opinions regarding implementation dates.

Law/Analysis

S.C. Code Ann. § 5-5-60 provides that, "Upon initial adoption of or on any change to one of the alternate forms of government, all members of the existing governing body shall continue to serve their elected terms and until their successors are elected and qualify."

On numerous occasions, we have opined that changing the form of municipal government would not be immediately implemented upon favorable passage of the referendum. Instead, the change in form becomes effective (assuming all pre-clearance requirements have been met) upon the expiration of the terms of the council members serving at the time the referendum is held. See Ops. S.C. Atty. Gen. dated May 1, 2008; August 9, 2004; November 12, 1981; April 17, 1979.

If the referendum is passed prior to July 1, 2010, the terms of the current Mayor and all six current members of the City Council will have expired by July 1, 2012. However, if the referendum is passed on or after July 1, 2010, there will be a new mayor and three new council members. Hence, because of the two year staggered election for three of the six council members, the terms of those individuals will not expire until July 1, 2014. S.C. Code Ann. § 5-5-60 is clear that the terms of all members of the governing body must expire.

Mr. Gaines
Page 2
March 17, 2010

Conclusion

If the referendum to change the form of government passes on or after July 1, 2010, then the implementation date of the change would occur on July 1, 2014. I would also note that the United States Department of Justice has taken the position that any change in the form of municipal government must be submitted to it for pre-clearance pursuant to Section 5 of the 195 Voting Rights Act before it can be implemented.

Sincerely,

Henry McMaster
Attorney General



By: Leigha Blackwell
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General