



ALAN WILSON  
ATTORNEY GENERAL

November 17, 2011

The Honorable Bakari T. Sellers  
Representative, District 90  
314-A Blatt Building  
Columbia, South Carolina 29201

Dear Representative Sellers:

You have requested an opinion of this Office “as to the proper implementation of Act 301 of 2010 (H4635, A301, R167; signed by the Governor March 31, 2010) . . . .”

The Act you have referenced is set forth in full below:

**AN ACT TO AUTHORIZE THE CITY OF BAMBERG TO ADD TWO  
ADDITIONAL COMMISSIONERS TO THE BOARD OF COMMISSIONERS OF  
PUBLIC WORKS OF THE CITY OF BAMBERG.**

Be it enacted by the General Assembly of the State of South Carolina:

**Commissioners may be added**

SECTION 1. Notwithstanding the provisions of Section 5-31-210 of the 1976 Code, the governing body of the City of Bamberg, by ordinance, may add two additional commissioners to the Board of Commissioners of Public Works of the City of Bamberg. If two additional members are added, they must be elected as provided in Section 5-31-210.

**Time effective**

SECTION 2. This act takes effect upon approval by the Governor.

Section 5-31-210 of the South Carolina Code provides, in its entirety, as follows:

At any election for bonds held to meet the costs of acquiring property of the character referred to in § 5-31-610 the elector shall vote for three citizens of the city or town whose terms of office shall be respectively two, four and six years and until the general election for municipal officers next following the expiration of the short term, and until their successors are elected and qualified. The classification above designated as to the term shall be ascertained by the commissioners after election by lot. At each general election for municipal officers following the expiration of the term of the commissioner holding the short term and at every such election every two years thereafter, one such commissioner shall be elected for a term of six years and until his successor is elected

and qualified. The officers so elected and their successors in office shall be known as the commissioners of public works of such municipality and by that name may sue and be sued in any of the courts of this State.

In addition to the three members of the board of commissioners of public works of a municipality authorized above, the governing body of a municipality with a population of fifty thousand persons or less according to the 1980 official United States Census may provide by ordinance for the election of two additional commissioners. The new commissioners must be elected at a special election or at any general election following the enactment of the ordinance in the same manner that the other commissioners are elected. The new member receiving the highest number of votes in that election shall serve for a term of six years and the new member receiving the next highest number of votes in that election shall serve for a term of four years. Their successors must be elected in the election for municipal officers every four or six years thereafter for terms of office of six years. The members elected shall serve until their successors are elected and qualify. Vacancies in these two new positions must be filled in the same manner as other vacancies on the board of commissioners of public works are filled. The provisions of this paragraph for two additional commissioners apply only to boards of commissioners of public works founded after 1920.

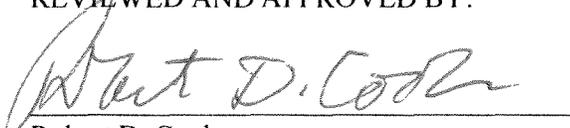
By its plain language, the second paragraph of section 5-31-210 permits action similar to that allowed by Act 301 of 2010, but it restricts such action to municipalities with a population of fifty thousand or less (according to the 1980 census) in which the board of commissioners of public works was founded after 1920. According to the website for the City of Bamberg, the Board of Commissioners of Public Works for the City of Bamberg was formed in 1905. Assuming this information is accurate, it appears the effect of Act 301 is to remove this barrier to allowing the City of Bamberg to take advantage of the second paragraph of section 5-31-210.<sup>1</sup> Because Act 301 expressly retains the election procedures set forth in section 5-31-210 and retains the same non-mandatory language, it appears the Act simply gives discretion to the governing body of the City of Bamberg as to whether that body will provide for the election of two additional commissioners.

Very truly yours,



Dana E. Hofferber  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General

---

<sup>1</sup> As always, we have refrained from investigation into issues of fact and have presumed that all statutes are valid. Our analysis in this opinion is limited to the specific question that you have asked.