

6479 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

May 27, 1998

The Honorable Robbie Dix, Jr.
Mayor, Town of Allendale
939 Flat Street
Allendale, South Carolina 29810

RE: Informal Opinion

Dear Mayor Dix:

You have asked whether town council can refuse to hold an election to change the form of government when a petition certified by the county election commission containing 15% of the registered voters is presented to the council.

Section 5-5-20 of the South Carolina Code of Laws governs your question. This Section reads as follows:

After the date of official council action if a petition executed by fifteen percent of the qualified electors is presented to the municipal governing body, certified by the county election commission, for an election to determine or change the form of government or if the municipal governing body shall by ordinance call for such an election, the municipal governing body shall conduct a special election not later than ninety days nor earlier than thirty days after the receipt of the certified petition or the passage of the council ordinance; *provided*, however, that no referendum shall be held pursuant to ordinance of the municipal council sooner than two years following the date the form of municipal government is initially selected pursuant to the provisions of this chapter.

A number of principles of statutory construction are important in resolving your inquiry. First and foremost, in interpreting a statute, the primary purpose is to ascertain

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the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). The words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988). The Court must apply the clear and unambiguous terms of a statute according to their literal meaning. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991).

In applying the foregoing principles to Section 5-5-20, the following conclusion must be reached: Section 5-5-20 provides two separate methods that may be followed to reach the point where a special election is conducted to change the form of government in a municipality. The first method is: "... if a petition executed by fifteen percent of the qualified electors is presented to the municipal governing body, certified by the county election commission, for an election to determine or change the form of government ... the municipal governing body shall conduct a special election not later than ninety days nor earlier than thirty days after the receipt of the certified petition" The second method is "... if the municipal governing body shall by ordinance call for such an election [one to determine or change the form of government] the municipal governing body shall conduct a special election not later than ninety days nor earlier than thirty days after the ... passage of the council ordinance."

Having established that there are two separate methods that may be used to bring the change of government question to the voters, the question then turns to whether the governing body of the municipality has discretion to determine whether to conduct a special election following presentation of a certified petition. The language of 5-5-20 reads "... if a petition executed by fifteen percent of the qualified electors is presented to the municipal governing body, certified by the county election commission, for an election to determine or change the form of government ... the municipal governing body **shall** conduct a special election not later than ninety days nor earlier than thirty days after the receipt of the certified petition" (emphasis added).

Use of the word "shall" in a statute generally connotes mandatory compliance. S.C. Dept. of Highways and Public Transportation v. Dickinson, 288 S.C. 189, 341 S.E.2d 134 (1986). Applying the previously stated rules of statutory construction in conjunction with the mandatory nature of the word "shall", it is safe to conclude that when a petition executed by fifteen percent of the qualified electors is presented to the municipal governing body, certified by the county election commission, for an election to determine or change the form of government, the municipal governing body does not have discretion in determining whether to hold a special election; the municipal governing body is required to hold a special election.

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You have also informed this Office that the County Election Commission rejected 82 signatures because there was no descriptive heading on the particular sheets where these signatures were found. You have asked whether the County Election Commission possessed this power. This Office has previously stated that the petition requirements for nominating petitions would also govern petitions arising under home rule. Op. Atty. Gen. dated November 5, 1981. These requirements are found in Section 7-11-10 et seq. of the South Carolina Code of Laws. This Office is not the proper authority to determine the adequacy of the petition as such would be properly made by the County Election Commission. Op. Atty. Gen. dated March 10, 1977. Therefore, I will have to defer to the County Election Commission's judgment in reaching this decision. I note that in an opinion dated August 21, 1980, this Office concluded that it would generally not be reasonable to count signatures on a piece of paper that does not reflect the signatures were for the proposition submitted.

Finally, I have been informed that the Town Council passed a resolution forbidding council discussion of the change of government for at least eighteen months. It is my understanding that Town Council operates under Robert's Rules of Order to govern the conduct of its meetings. Council's decision in this regard is one of parliamentary procedure, the determination of which is basically within the purview of the legislative body. However, a council cannot override state law through parliamentary procedure. Here, council is required to hold a special election on the change of government upon presentation of a petition executed by fifteen percent of the qualified electors and certified by the County Election Commission. S.C. Code Ann. § 5-5-20.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch

Assistant Attorney General