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# The State of South Carolina



## Office of the Attorney General

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February 18, 1994

Paul M. Fata, Esquire  
Lee County Attorney  
Post Office Box 568  
Bishopville, South Carolina 29010

Dear Mr. Fata:

You have advised that, due to lack of preclearance of single member districts of Lee County Council by the United States Department of Justice, elections of several county council members were not held in November 1993 as would ordinarily have been the case. Approval of the districts was received from the Justice Department on February 4, 1994, thus removing the impediment, imposed by federal law, to holding these elections pursuant to state law. You have asked about the mechanism to call for the election of these council positions, the incumbents of which have been holding over since January 1993.

At least three possible solutions may be considered by Lee County Council. One would be to seek approval of the election and timetable by a court of competent jurisdiction, through a declaratory judgment or other appropriate action. Another would be for Lee County Council to adopt an ordinance establishing the timetable for the election process. A third possibility would be to follow the timetable for special elections as established in S.C. Code Ann. § 7-13-190, the triggering event being the receipt of preclearance or approval by the Justice Department on February 4. There is a statute permitting the Governor to call an election under specified circumstances, see § 7-13-1170, but the circumstances you have described do not appear to be appropriate to invoke that statute.

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We would caution that this question is novel and thus the answer cannot be completely free from doubt, particularly since state law offers no guidance on the situation facing Lee County. The vacancies were actually created by operation of state law but, due to intervention of the Voting Rights Act, could not be filled. N.A.A.C.P. v. Hampton County Election Commission, 470 U.S. 166 (1985). It would appear thus that § 7-13-190 could be an appropriate means to fill these vacancies, with the date on which the impediment to election was removed as the triggering date, should Lee County Council elect to follow that procedure. We must emphasize that the decision on how to call the election must be made by Lee County Council.

With kindest regards, I am

Sincerely,



Patricia D. Petway  
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



Robert D. Cook  
Executive Assistant for Opinions