

5499 Liberty

The State of South Carolina



Office of the Attorney General

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December 7, 1994

Thomas M. Boulware, Esquire
Attorney for City of Barnwell
Post Office Box 248
Barnwell, South Carolina 29812

Dear Mr. Boulware:

You have sought the opinion of this Office as to whether a municipality would be legally authorized, pursuant to S.C. Code Ann. § 5-15-60 (1976, as amended), to elect its council members by a majority vote feature and its mayor by a plurality vote feature. You have advised that the council members are elected from single-member districts and the mayor is elected at large. You have further advised that the United States Department of Justice, under the Voting Rights Act procedures for preclearance, has approved the single-member district plan, the majority vote feature as to council members, and the staggered terms of council members; but the Justice Department has not yet approved the majority vote feature as to the mayor, such being reconsidered at this time.

Section 5-15-60 requires the following of municipalities as to election of mayors and council members:

Each municipality in this State shall adopt by ordinance one of the following alternative methods of nominating candidates for and determining the results of its nonpartisan elections:

- (1) The nonpartisan plurality method prescribed in § 5-15-61;
- (2) The nonpartisan election and runoff election method prescribed in § 5-15-62;

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(3) The nonpartisan primary election and general election method prescribed in § 5-15-63. If nonpartisan elections are not provided for, nomination of candidates for municipal offices may be by party primary, party convention or by petition in accordance with the provisions of this chapter, the applicable provisions of the state election laws and the rules of municipal political party organizations not in conflict therewith.

The City of Barnwell elects its mayor and council members in nonpartisan elections.

Section 5-15-61 provides a means whereby a municipality's mayor and council members would be elected by plurality vote in a nonpartisan election; there is no provision for any procedure to count votes and declare a winner (or winners, if more than one office should be voted on) other than by plurality under § 5-15-61.

Under § 5-15-62, elections would be conducted in nonpartisan elections and runoffs. Subsection (a) provides that results in this method of election will be determined by a majority of votes cast. The procedure to determine the majority under several scenarios is provided, as is a runoff method should no candidate receive a majority vote. There is no provision for determination of results by plurality within § 5-15-62.

Finally, § 5-15-63 provides for determination of election results under a nonpartisan primary election and general election. A review of this statute shows that while the term "plurality" is not used, the description of how many votes one must obtain to be declared the winner clearly indicates a plurality rather than a majority. There is no provision herein for electing some offices by plurality and others by majority vote.

In construing any statute, including § 5-15-60, the primary objective of both the courts and this Office is to ascertain and effectuate legislative intent if it is at all possible to do so. McGlohon v. Harlan, 254 S.C. 207, 174 S.E.2d 753 (1970). Words used in a statute are given their plain and ordinary meanings; in the absence of ambiguity, such words are to be applied literally. Bohlen v. Allen, 228 S.C. 135, 89 S.E.2d 99 (1955); State v. Goolsby, 278 S.C. 52, 292 S.E.2d 180 (1982). If the words of a statute are susceptible of any sensible meaning, neither a court nor this Office may add to them such words as would give the statute a different meaning; such would be legislating rather than interpreting the statute. Banks v. Columbia Ry. Gas & Electric Co., 113 S.C. 99, 101 S.E. 285 (1919). Moreover, express mention of certain items within a statute implies the

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exclusion of all other things not mentioned. Home Building & Loan Ass'n v. City of Spartanburg, 185 S.C. 313, 194 S.E. 139 (1938).

Applying the foregoing rules of statutory construction to § 5-15-60, supra, we are of the opinion that only the three methods of election specified therein are options for municipalities which elect their mayors and council members by nonpartisan elections, and the plain language of § 5-15-60 requires that municipalities utilizing nonpartisan elections adopt only one of the three methods. Such municipalities are not free to establish a method outside those three for their nonpartisan elections, nor are those municipalities free to elect part of council by one method and the remainder of council (i.e., the mayor) by another method. Section 5-15-60 requires such a municipality to select only one of the three options. Thus, the City of Barnwell may not elect its council members by a majority vote feature and its mayor by a plurality vote feature and at the same time remain in compliance with § 5-15-60.

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