

The State of South Carolina



Office of the Attorney General

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April 13, 1989

William R. Byars, Jr., Esquire
County Attorney for Kershaw County
P. O. Drawer 10
Camden, South Carolina 29020

Dear Mr. Byars:

I am in receipt of your recent letter. You have stated that Kershaw County Council was originally established in 1968 as a five member council; one of these elected members was the chairman. You have further stated that this is still the makeup of the council, ie., a chairman elected as a separate office and four other members of the council. You have stated the council is looking at various alternatives in regard to a possible single member plan and have inquired if the chairman would be required by State law to continue being elected as a separate office.

South Carolina Code of Laws, 1976, Section 4-9-90 provides that

[i]n those counties in which the chairman of the governing body was elected at large as a separate office prior to the adoption of one of the alternate forms of government provided for in this chapter, the chairman shall continue to be so elected....

It has been the prior opinion of this Office that this language is mandatory. Therefore, if the chairman was elected at large prior to home rule he would continue to be so elected. See, opinion dated December 17, 1985, to Roy McBee Smith, answer

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to question 5, copy enclosed. See also opinion dated January 16, 1978, to Mr. Julian Richardson, copy enclosed. 1/

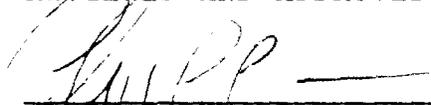
Sincerely,



Treva G. Ashworth
Senior Assistant Attorney General

TGA:bvc
Enclosures

REVIEWED AND APPROVED BY:



EDWIN E. EVANS
Chief Deputy Attorney General

ROBERT D. COOK
Executive Assistant for Opinions

1/ However, it should be noted that although the code provisions appear to require the chairman to continue to be elected at large, even with a change to a single member plan as has occurred in Aiken County, this was not the result in Georgetown. Georgetown was operating under an at large method of election. A referendum was conducted and inter alia, due to the unclear wording of the petition as to how the chairman would be elected under a single member plan, lawsuits were brought. At a hearing before the County Board of Canvassers, the Board found that the voters had intended to approve the chairman being elected from a single member district. For reasons not relevant here, this Order ended the litigation and Georgetown is now operating under a single member plan of seven members, the chairman no longer being elected at large.