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ATTORNEY GENERAL

March 31, 2014

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Dear Ms. Crosby and Ms. Mahn,

We received your joint request seeking an opinion of this Office as to whether State law requires that a referendum be held in order to change elections for the City of Georgetown (the "City") from partisan to nonpartisan. By way of background, you state:

The Mayor and City Council ... are elected at-large, in partisan elections, with party primaries. The City has transferred authority to conduct all elections to the County Election Commission by ordinance. We have been asked to outline the method to consider a change to nonpartisan elections.

Having consulted with our professional colleagues and researched the issue, we believe there may be some question as to whether the law requires a referendum to change to nonpartisan elections. The answer may turn on whether Council has the option of referendum and/or the definition of "method of election." To wit:

§ 5-15-30. Procedure for changing the number of or method of election of council members.

If by action of a majority of council, or if fifteen percent of registered municipal electors present to the municipal election commission a duly executed petition on which none of the signatures is more than six months old, in which an election is sought to change the number of council members to a number authorized by the form of government under which the municipality is then operating or to change the method of election of council members, then the municipal governing body shall call a referendum There may be only one question framed by the municipal governing body for the referendum in a format similar to that provided by Section 5-5-40, and no

other election on the same question may be held for two years after that time.... A change receiving a majority of the votes cast is effective at the next general election of the municipality. (emphasis added)

If changing from partisan with primaries to nonpartisan elections is a "change of the method of election," the law appears to require a referendum. This is consistent with what was done in the cities of Charleston, Florence, and others, to our knowledge. Additionally, we reviewed the following, which while not controlling, seems to support that interpretation:

"A referendum is a special election to vote on a particular question. The state constitution and statutes require a referendum for certain actions, such as incurring general obligation debt exceeding the 8 percent limit, changing the form of government, *changing the number or method of election of councilmembers*, purchasing or selling a utility system, or granting an exclusive franchise...." (emphasis added)

Forms and Powers of Municipal Government, MASC August 2012

However, South Carolina also has specific statutes on nonpartisan elections:

§ 5-15-60. Municipality to adopt method of nominating candidates for and determining results of nonpartisan elections.

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 Section 5-15-61;
- (2) The nonpartisan election and runoff election method prescribed in Section 5-15-62;
- (3) The nonpartisan primary election and general election method prescribed in Section 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. (emphasis added)

This may only apply after a municipality has adopted nonpartisan elections. But, as this section uses the word "method" to describe how candidates are nominated, and also uses the term "by ordinance," we cannot clearly reconcile the two sections....

Law/Analysis

As mentioned in your letter, we believe the issue central to your request is whether a change from partisan to nonpartisan municipal elections constitutes a "change in the method of election of council members" such that a referendum on the issue is required pursuant to S.C. Code § 5-15-30 (Supp. 1990). A number of principles of statutory interpretation are relevant here. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 581 (2000). "[Courts] will give words their plain and ordinary meaning, and will not resort to a subtle or forced construction that would limit or expand the statute's operation." Harris v. Anderson County Sheriff's Office, 381 S.C. 357, 362, 673 S.E.2d 423, 425 (2009). "[S]tatutes must be read as a whole, and sections which are part of the same general statutory scheme must be construed together and each one given effect, if reasonable." State v. Thomas, 372 S.C. 466, 468, 642 S.E.2d 724, 725 (2007). "[T]he title of a statute and heading of a section are of use only when they shed light on some ambiguous word or phrase and as tools available for resolution of doubt, but they cannot undo or limit what the text makes plain." Garner v. Houck, 312 S.C. 481, 486, 435 S.E.2d 847, 849 (1993).

Looking to related statutes, the section preceding § 5-15-30 provides:

§ 5-15-20. Methods of election of council; mayor elected at large; qualifications.

Each municipality in this State shall provide by ordinance for the election of its council. Councils shall select any one of the following **methods of election of council**:

- (1) Members of the council elected from the municipality at large.
- (2) One member elected from each ward of the municipality by the qualified electors of the ward. Candidates seeking office from a particular ward shall be residents of the ward during their entire terms of office.
- (3) Some members elected from wards as provided for in (2) and the remainder elected from the municipality at large.
- (4) Members required to be residents of particular wards but be elected from the municipality at large.
- (5) Some members may be required to be residents of particular wards and others may be residents of the municipality without regard to a particular ward and all members shall be elected from the municipality at large.

Regardless of the form adopted by the municipality, the mayor shall be elected at large.

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Mayors and councilmen shall be qualified electors of the municipality and, if they are elected subject to residential or ward requirements as provided in this section, they shall be qualified electors of the ward prescribed for their election qualification.

§ 5-15-20 (1976) (emphasis added).

The title of § 5-15-20, like that of § 5-15-30, indicates it addresses, *inter alia*, "[m]ethods of election of council." It is clear from the provisions of § 5-15-20 that the phrase "methods of election" as used in that section refers to whether members of council are elected at large, from single-member districts, or a combination of both. The use of the phrase "method(s) of election of council" in both the title and text of each section, as well as the proximity of the two sections, suggests that a "change in the method of council" for purposes of § 5-15-30 was intended to refer to the methods of election provided in § 5-15-20. In fact, in a 1982 opinion discussing § 5-15-30 we stated "it is clear from the preceding section, § 5-15-20, that when the term 'method of election' is used, what is meant is the method of determining the geographical districts from which council members shall be elected," and that "the election requirement of § 5-15-30 clearly applies to the matters set forth in § 5-15-20." Op. S.C. Att'y Gen., 1982 WL 189318 (June 10, 1982); see also Op. S.C. Att'y Gen., 1978 WL 35253 (Dec. 1, 1978) (advising that the procedure for changing the method of election of city council from at large to single-member is governed by § 5-15-30).

This understanding of "method of election" as used in § 5-15-30 is supported by other related statutes. The provisions of § 5-1-50 concern elections to vote on the incorporation of a new municipality. Subsection (B)(1) states:

(B)(1) At such election, all registered electors living in the area sought to be incorporated must be allowed to vote on the following questions:

- (a) incorporation;
- (b) name of the municipality;
- (c) the form of government;
- (d) method of election as prescribed in Section 5-15-20;**
- (e) whether the election is partisan or nonpartisan; and**
- (f) the terms of the mayor and council members.

§ 5-1-50(B)(1) (Supp. 2005) (emphasis added).

As emphasized above, § 5-1-50(B)(1) expressly recognizes that the "method of election" of council and the question of whether council elections are partisan or nonpartisan are distinct and separate issues. The direct reference in subsection (B)(1)(d) to the "method of election as prescribed in Section 5-15-20" reaffirms the conclusion of our prior opinions mentioned above that "method of election" as used

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in § 5-15-30 refers to whether council is elected at large, from single-member districts, or a combination of both.

Furthermore, language similar to that used in § 5-15-30 is found in § 4-9-10(c) concerning changes to the initial form of a county government. That subsection provides, in part, that "the initial form of government and the number and *method of election* of county council" may be changed only by referendum. § 4-9-10(c) (emphasis added). The only language in § 4-9-10 concerning the method by which members of county council are elected is found in subsection (a). In addition to providing that a referendum could be called prior to July 1, 1976 to determine the initial form of county government, § 4-9-10(a) goes on to state that "[a] referendum may also be called to determine the wishes of the registered electors as to the question of *whether the members of the governing body of the county shall be elected from defined single member election districts or at large from the county....*" *Id.* (emphasis added). Thus, for purposes of § 4-9-10(c) only a proposed change in the election of county council from at large to single-member districts or vice versa constitutes a change in the "method of election" such that a referendum is required. Although counties do not have the option of nonpartisan elections, § 4-9-10 and §§ 5-15-20 and -30 were all originally enacted as part of the "home rule" legislation of 1975.¹ This suggests the Legislature understood the phrase "method of election" as used in each of these sections to have the same meaning, i.e., to refer to the geographical area from which members of a local governing body are elected.

With that being said, nothing in § 5-15-60 expressly sets forth the procedure by which a municipality changes from partisan to nonpartisan elections. As indicated in your letter, the language of that section stating municipalities "shall adopt by ordinance one of the following alternative *methods of nominating candidates* for and *determining the results* of its nonpartisan elections" appears to apply *after* nonpartisan elections have already been adopted. (Emphasis added). Although the provisions of §§ 5-15-60 to -63 concerning nonpartisan elections use the words "method" or even "election method," these terms clearly refer to the methods of nominating candidates and/or counting votes to determine who is nominated or elected, e.g., whether candidates must receive a plurality or majority of votes. Such matters are unrelated to the issue of whether candidates are elected at large, from single-member districts, or a combination of the two. Therefore, we do not believe such matters constitute a "method(s) of election" for purposes of §§ 5-15-20 and -30. Furthermore, we believe the last sentence of § 5-15-60 which provides that candidates for municipal offices may be nominated by party primary, party convention, or petition "[i]f *nonpartisan elections are not provided for*" suggests the municipality decides whether elections are partisan or nonpartisan. (Emphasis added). Consistent with the broad power given to municipalities under § 5-7-30 to adopt ordinances "not inconsistent with the Constitution and general law of this State ... respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it," it is our opinion municipal elections may be made nonpartisan without a referendum.

Conclusion

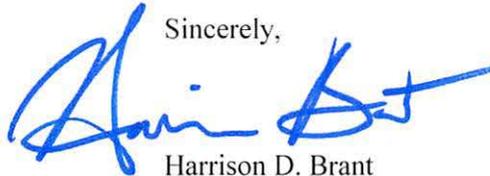
It is our opinion a referendum is not required under State law to change municipal elections from partisan to nonpartisan. Consistent with prior opinions of this Office, the language of § 5-15-30 requiring a referendum "to change the *method of election* of council members" refers to the "*methods of election* of

¹ See Act No. 283 of 1975.

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council" set forth in § 5-15-20 – i.e., whether members are elected at large, from single-member districts, or a combination of both. This conclusion is further supported by the language of several related statutes such as § 5-1-50(B)(1) which indicates the "method of election ... prescribed in Section 5-15-20" is an issue separate and distinct from the question of whether elections are partisan or nonpartisan. In addition, language similar to that used in § 5-15-30 is found in § 4-9-10 which indicates a change in the "method of election of county council" requiring a referendum likewise means a change in whether council is elected at large or from single-member districts. In the absence of any legislative provision expressly requiring a referendum to change municipal elections from partisan to nonpartisan, we believe municipalities have the power under § 5-7-30 to effectuate such a change via ordinance.

Sincerely,



Harrison D. Brant
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General