

The State of South Carolina



Office of the Attorney General

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November 10, 1986

Thomas M. Boulware, Esquire
Barnwell County Attorney
Post Office Box 248
Barnwell, South Carolina 29812

Dear Mr. Boulware:

By your letter of October 28, 1986, you had asked for the opinion of this Office as to the number of choices which may be placed on the ballot for consideration by the electorate when changes are contemplated in the form of government, number of council members, or method of election of Barnwell County Council. As you are aware, our policy requires that a memorandum of law be submitted with opinion requests from local governments; however, we have addressed this issue previously and are enclosing prior opinions which will give you the guidance you seek. One opinion requires clarification, however.

Section 4-9-10(c), Code of Laws of South Carolina (1976, as amended), provides in part:

... In any referendum, the question voted upon, whether it be to change the form of government, number of council members, or methods of election, shall give the qualified electors an alternative to retain the existing form of government, number of council members, or method of election or change to one other designated form, number, or method of election. ...

This section was interpreted in an opinion dated December 17, 1985, in reliance upon earlier opinions dated May 12, 1980 and March 17, 1980. While the arguments for the various interpretations were made and it was noted that our interpretation reached therein was not free from doubt, I concluded that

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more than two alternatives on a ballot were permissible.

The opinion of December 17, 1985, in its reliance upon the 1980 opinions, did not take into account the fact that the language of Section 4-9-10(c) quoted above was added to the Code in 1982 by Act No. 313. An examination of the title of Act No. 313 resolves the difficulty of interpretation in favor of only two alternatives from which the electorate would choose: the present method of election, number of members, or form of government, and one alternative. This interpretation would comport with the mandate also in Section 4-9-10(c) that if more than one petition requesting a referendum should be received, the petition bearing the largest number of signatures of registered voters is to be the proposal presented to the electorate.

To the extent that today's advice is in conflict with advice given in response to question 1 in the opinion dated December 17, 1985, the earlier advice is superseded. Thus, we would now advise that two alternatives be given on a ballot in a referendum being conducted pursuant to Section 4-9-10(c): retaining the present form of government, method of election, or number of council members, or changing to one designated form, number, or method of election.

We trust that these opinions and the clarification provided herein will provide the needed guidance. Please let us know if you need clarification or additional assistance.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions