



ALAN WILSON  
ATTORNEY GENERAL

August 14, 2014

Mr. Jeff M. Anderson  
Attorney for the County of Lexington  
140 East Main Street  
Lexington, South Carolina 29071

Dear Mr. Anderson:

We received your letter dated August 12, 2014. The following is this Office's understanding of your question and our opinion based on that understanding.

**Issue:**

On August 7, 2014, the governing body for the Town of Chapin ("Town") received a certified petition, executed by at least 15% of the qualified electors of the Town, for the purpose of having a special election to determine the form of government within the Town.

The Town's governing body, pursuant to S.C. Code Section Ann. 5-15-145 and Town of Chapin Ordinance No. 04032007, has delegated the conducting of elections to the County of Lexington ("County"), and the County has accepted the authority of conducting municipal elections through Lexington County Ordinance No. 06-04.

Finally, your letter acknowledged the May 27, 1998, South Carolina Attorney General Opinion to the Honorable Robbie Dix, Jr., which stated the use of the word "shall" in S.C. Code Ann. Section 5-5-20<sup>1</sup> means that "the municipal governing body does not have discretion in determining whether to hold a special election; the municipal governing body is required to hold a special election." Op. Atty. Gen. dated May 27, 1998.

With these facts in mind, you have asked:

(1) Does the Town or the County set the date of the special election?

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<sup>1</sup> "After the date of official council action if a petition executed by fifteen percent of the qualified electors is presented to the municipal governing body, certified by the county election commission, for an election to determine or change the form of government . . . , the municipal governing body **shall** conduct a special election not later than ninety days nor earlier than thirty days after the receipt of the certified petition . . . ." S.C. Code Ann. Section 5-5-20 (emphasis added).

- (2) If the Town sets the date of the special election, is it by Town Resolution by Town Council or by written Notice from the Mayor to the County Election Commission?
- (3) Regardless of who sets the date and how, can the special election question be placed on the November 4, 2014 general election ballot?

**Law/Analysis:**

Taking your questions in the order presented above:

As to whether the Town's governing body or the County sets the date for the special election when the Town's governing body has delegated the conducting of the elections to the County, it is the Town's governing body. Section 5-15-145(A) authorizes the transfer of authority only as to the **conducting** of municipal elections and does not authorize delegation of any other powers or responsibilities. Additionally, Section 5-15-145(B) states that the municipality and the county must agree to the terms of the transfer. The agreed upon terms of the transfer between the Town and the County are outlined in their respective ordinances. See Ordinance Nos. 04032007 and 06-04. Neither Ordinance states that the Town has transferred its power to set the date of the election to the County.

As to how the Town sets the date for the election, Section 5-5-20 provides guidance. The governing body, subject to its procedures, will set the date. Section 5-5-20 ("[T]he municipal **governing body** shall conduct a special election . . . ." (emphasis added)).

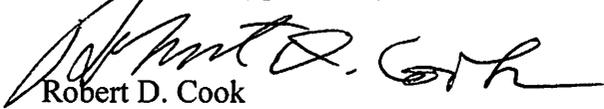
Finally, regardless of who sets the date and how, with the exception of the timing requirements outlined in Section 7-13-355,<sup>2</sup> our office is not aware of any statutory provision that prevents the special election question from being placed on the November 4, 2014 general election ballot.

**Conclusion:**

A special election regarding the form of government for the Town of Chapin must be held no earlier than thirty days and no later than ninety days from August 7, 2014; the Town's governing body must select the date; and if the Town's governing body elects to place the question on the November 4, 2014 general election ballot, it must provide the necessary information to the appropriate election commission by 12:00 noon this Friday, August fifteenth.

  
Johanna C. Valenzuela  
Assistant Attorney General

Reviewed and approved by:

  
Robert D. Cook  
Solicitor General

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<sup>2</sup> Section 7-13-355 states, in part, the question must be "submitted to the appropriate election commission . . . no later than 12:00 noon on August fifteenth . . . ."