

1981 WL 158030 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 28, 1981

*1 Mr. James F. Hendrix
State Election Commission
Post Office Box 5987
Columbia, South Carolina 29250

Dear Jim:

This is in response to your September 28, 1981, correspondence regarding certain questions raised by the Chairman of the Election Commission of the Town of Liberty. As I understand the circumstances, a portion of the October 10, 1980, municipal election of the Town of Liberty was voided by an Order of the Court of Common Pleas, County of Pickens, and the Election Commission of the Town was directed to conduct a new election. The copy of the Order forwarded me by you contains four pages, but not the signature page. The questions raised by the Election Commission of the Town concern how the new election will be conducted.

For two reasons, I have concluded that an opinion from this Office on the questions raised by the Chairman are inappropriate. First, the Town is represented by a local attorney who was directly involved in the aforementioned litigation. Also, an opinion by this Office would be inappropriate where a court order has directed that a new election be conducted and addressed the specifics thereof. I do believe, however, that it would be of some assistance if this Office discussed, for purposes of assistance only, the questions presented by the Chairman.

1. NOTICE: With respect to the nature of the new election, the Order states that 'proper notice' should be given. [Section 5-15-50, Code of Laws of South Carolina](#), 1976, as amended, provides that the public notice of a municipal election should be given at least sixty days prior thereto. Thus, public notice of at least sixty days prior to the new election would comply with the statute and should comply with the Order.

2. DATE: Because the Order directs that the Election Commission set the date for the new election, it should do so.

3. CANDIDATES: The defect found in the October 10, 1980, election related only to the races for the Ward 4 seat and the two at-large seats. There was no mention in the Order of any defect in the election as to the races for Mayor or other council seats. Therefore, it is believed that the Order would require a new election only for Ward 4 and the two at large seats.

4. TERMS: The Order does not address the matter of the terms of office of the persons who will be elected in the new election. Herewith is a September 21, 1979, opinion of our Office that should be applicable and that discusses various legal authorities. As recognized in the opinion, the better practice would be to have the newly council members serve out the terms initiated by the members elected in the October 10, 1980. This would allow future elections and terms to be kept on a uniform basis. If there is any serious concern over this question, the Town might consider asking for guidance from the Court.

5. ORDINANCES: The question of the validity of ordinances passed by the council with the participation of the *de facto* members does not appear to be a matter that falls within the responsibility of the Election Commission. In any event, as the Order indicates, actions taken by *de facto* officials are valid. [McLeod v. Probate Court of Colleton County](#), 266 S.C. 279 (1976); [Morris v. Scott](#), 258 S.C. 435 (1972); [Heyward v. Long](#), 178 S.C. 351 (1935).

*2 A copy of this letter is being sent to Dallas Ball, who I understand is the attorney for the Town. For the reasons stated above, I believe it would be more appropriate for Mr. Ball to handle the transmittal of this letter to the Town officials, including the Election Commission.

Sincerely,

James M. Holly
Assistant Attorney General

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