

1982 WL 189120 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 18, 1982

*1 Honorable Robert A. Kohn
Member
House of Representatives
4326 Evanston Boulevard
Charleston Heights, South Carolina 29405

Dear Representative Kohn:

You have raised several questions regarding changes in the form of county government under Act No. 283 of 1975, as amended, the 'home rule' legislation. I shall respond to them in the order in which you have posed them:

1. A county council may call for a referendum to change the form of government pursuant to [Section 4-9-10\(c\), CODE OF LAWS OF SOUTH CAROLINA](#), 1976 (Cum.Supp.). While that provision is silent as to whether or not it should be called by resolution or ordinance, my opinion is that the safest method is by ordinance because any 'legislative action' must be taken by ordinance [[4-9-120, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended] and there is authority for the proposition that providing for an election or referendum is a legislative action. 5 [McQUILLIN MUNICIPAL CORPORATIONS § 15.04](#).

2. The referendum may be held in a general election or a special election as the county council determines. [§ 4-9-10\(6\), CODE OF LAWS OF SOUTH CAROLINA](#), 1976 (Cum.Supp.). If the referendum is held in a general election, at least 60 days' notice is required pursuant to [Section 7-13-35, CODE OF LAWS OF SOUTH CAROLINA](#), 1976 (Cum.Supp.). If it is held in a special election, at least 60 days' notice is required pursuant to [Section 7-13-35, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, (Cum.Supp.).

3. If the county council provides for the referendum (as opposed to the petition method), the council specifies the form of government to which it is proposed to be changed. The ballot must provide the voters with a means by which they can vote to retain the present form of government. [§ 4-9-10\(c\), CODE OF LAWS OF SOUTH CAROLINA](#), 1976 (Cum.Supp.). The general ballot form for the submission of a question is as follows:

The form of ballot in an election . . . in which any . . . question or issue is submitted to a vote of the people shall be a statement of the question or questions and shall thereafter have the following words:

In favor of the question or issue (as the case may be) []

Opposed to the question or issue (as the case may be) []

The voter shall be instructed in substance, if he wishes to vote in favor of the proposition to place a check or cross mark in the square after the words first above written and if he wishes to vote against the proposition to place a check or cross mark in the square after the words second above written. [§ 7-13-400, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended.

4. As to the method of electing the county council members and their number, the county council may also provide for a referendum to change those matters. [§ 4-9-10\(c\), CODE OF LAWS OF SOUTH CAROLINA](#), 1976 (Cum.Supp.). The county council cannot change the method of election or the number of members without an approving referendum. If a referendum is

held to change the form of government without, at the same time, submitting a proposed change in the method of election and the number of members to the voters, the method of election and number of members will remain unchanged.

*2 5. If a referendum to change the form of government is held before the November 1982, general election (at which election candidates for office in the present form of government are to be elected) and a change to a new form of government is approved, the general election should still be conducted as scheduled because the approval of the United States Department of Justice is required before any action can be taken to implement the change to the new form of government.

6. If the referendum to change the form of government passes and the United States Department of Justice approves the new form, the county council members elected in the November 1982, general election will serve as the county council members in the new form of government. The new form of government can go into effect as soon as Justice Department approval is obtained and the county council takes the necessary actions to implement the change (e.g., enactment of ordinance adopting the new form of government). If, however, there are members of the county council in the present form of government who are not provided for in the new form (e.g., if the county presently operates under the council-supervisor form and changes to a non-supervisor form), those members are to serve out the remainder of their terms pursuant to [Section 4-9-10\(e\), CODE OF LAWS OF SOUTH CAROLINA, 1976](#), as amended, as follows:

(e) All members of the governing bodies of the respective counties serving terms of office on the date on which a particular form of county government becomes effective shall continue to serve the terms for which they were elected or appointed and until their successors are elected or appointed and have qualified.

Accordingly, the supervisor, being a member of the governing body, is authorized to serve out the remainder of his term notwithstanding the fact that the new form of government does not provide for a supervisor. The holdings in [Hardy v. Francis](#), 273 S.C. 677, 259 S.E.2d 115 (1979), and [Greenville County Council v. Ashmore](#), 274 S.C. 466, 265 S.E.2d 38 (1980), are inapplicable because those supervisors (whose office, the Supreme Court said, was rendered a nullity by the adoption of the council-administrator form) were the pre-home rule supervisors whose office was not continued in any of the four forms of county government. They were not members of the governing body and, therefore, did not come within the protection of [Section 4-9-10\(c\), CODE OF LAWS OF SOUTH CAROLINA, 1976 \(Cum.Supp.\)](#). I am enclosing a copy of an earlier opinion which discusses a proposed amendment to [Section 4-9-10\(c\) of the Code](#) which, if enacted, would have specified the effective date of changes in form.

7. Assuming that the referendum to change the form of government is successful, during the period of the Justice Department review, the present form of government is the one pursuant to which the county council is to operate.

With kind regards,

Karen LeCraft Henderson

*3 Deputy Attorney General

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