

1982 WL 189476 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 1, 1982

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Dear Mr. Padgett:

In response to your requests for opinions from this Office regarding certain actions of municipal councils, I can advise you as follows:

1. An elected municipal council member may not give a general proxy vote to another council member to be used at all times and for all purposes when the member giving the proxy is not present at council meetings. First, there is no statute authorizing such a practice and proxy voting is generally not permitted in the absence of express legislative authority therefor. Cf., 26 AM.JUR2d Elections § 235. Second, even assuming that such statutory authority existed, it would most probably be violative of public policy because it would defeat the purpose of a multi-member body, i.e., that the deliberations and policy-making decisions be carried out by the consensus of a group rather than by one individual.

2. No meetings can be held by a public body, irrespective of whether or not a majority of the membership is present, in violation of the requirements of [Sections 30-4-10 et seq., CODE OF LAWS OF SOUTH CAROLINA, 1976 \(Cum.Supp.\)](#), the 'Freedom of Information Act'. [Section 30-4-80 of the Code](#) requires all meetings of all public bodies in South Carolina to be held pursuant to the notice specified in that Code Section. See also, [§ 30-4-70\(c\), CODE OF LAWS OF SOUTH CAROLINA, 1976 \(Cum.Supp.\)](#).

3. A municipal judge or recorder elected by a majority of a municipal council without notice of the date, time, place or subject matter of the meeting to the other council members, the public or the press would have been elected in violation of the Freedom of Information Act. Whether or not that election is a nullity can be determined only by an action in the nature of quo warranto brought to challenge the official's title to office under the provisions of [Section 15-63-60, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended](#). See generally, 63 AM.JUR.2d Public Officers and Employees, § 503. I would also point out that any injunctive relief sought because of a violation of the Freedom of Information Act must be initiated no later than sixty days after the alleged violation occurs. [§ 30-4-100\(a\), CODE OF LAWS OF SOUTH CAROLINA, 1976 \(Cum.Supp.\)](#). Until and unless the official is removed from office, his actions are those of a de facto official and as such cannot be challenged in the event that he is removed. See, e.g., State, ex rel. McLeod v. Court of Probate of Colleton County, et al., 266 S.C. 279, 223 S.E.2d 166 (1975).

With kind regards,

Karen LeCraft Henderson
Deputy Attorney General

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