

1977 S.C. Op. Atty. Gen. 276 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-345, 1977 WL 24684

Office of the Attorney General

State of South Carolina  
Opinion No. 77-345  
November 2, 1977

\*1 Charles Porter, Esquire  
Richland County Attorney  
P. O. Box 4069  
Columbia, South Carolina 29240

Dear Mr. Porter:

You have requested an opinion from this Office as to whether or not the Richland County Council can prescribe by ordinance that the county treasurer's and county auditor's terms of office begin on the first Tuesday in January next following their election. In my opinion, it cannot so provide for the commencement of the county treasurer's term because of the provisions of Section 12-45-20, CODE OF LAWS OF SOUTH CAROLINA, 1976, and it need not so provide for the commencement of the county auditor's term because of the provisions of Section 4-11-10, CODE OF LAWS OF SOUTH CAROLINA, 1976.

Section 12-45-20 provides in part that the term of office of the county treasurer:  
. . . shall commence on the first day of July following his appointment or election. . . .

The provisions of Act No. 283 of 1975, the 'home rule' legislation, however, require the county treasurer (and county auditor) to be elected 'in the general election for terms of four years.' 59 STAT. 692 at 717 (1975).

Construing the two Code sections together, I think that the county treasurer is to be elected in the November general election every four years but that his term of office does not begin until the first day of July next following his election. The provisions of Act No. 283 specify that officials serving unexpired terms when a form of government is adopted by a particular county are to continue to serve 'until successors are elected and qualify.' § 4-9-60, CODE OF LAWS OF SOUTH CAROLINA, 1976. Accordingly, the present Richland County Treasurer will continue to serve until the candidate elected in the November, 1978, general election takes office on July 1, 1979. The result, of course, is that the county treasurer 'holds over' for an entire calendar year instead of six months but, until and unless the provisions of Section 12-45-20 of the Code are amended to delete the language specifying the commencement of the county treasurer's term of office, that language cannot be contradicted by a county ordinance. The provision of Act No. 283 authorizing the county council to 'provide by ordinance for the election of county treasurers and auditors as their appointed or elected terms expire' [59 STAT. 692 at 716 (1975)], has not, at least in my opinion, effected an implied repeal of the provisions of Section 12-45-20.

As far as the county auditor is concerned, I think that Section 9-11-10 of the Code specifying that the 'time for the commencement of the terms of office of the various county officers shall be the first Tuesday in January next after their election; . . .' would apply to the county auditor so that the county council need not so specify the terms unless merely to ratify the provisions of the statute. Of course, the present county auditor's term cannot be shortened thereby since he is allowed to remain in office until his term expires.

\*2 Although you have not raised the question, in my opinion, the terms of office of the Richland County Council begin on the first of January next following their election pursuant to Section 4-9-610, CODE OF LAWS OF SOUTH CAROLINA, 1976, and not on the first Tuesday of January next following their election. I am enclosing a copy of an earlier opinion addressed to

a member of the Richland County Council to that effect as well as copies of two earlier opinions relating to the question of the terms of office of the county treasurer and county auditor.

With kind regards,

Karen LeCraft Henderson  
Assistant Attorney General

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