

1979 WL 43020 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 24, 1979

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Dear Mr. Unger:

In response to your request for an opinion from this Office as to the procedure to be followed in order to change the terms of office of the members of the Edisto Beach City Council from two-year to four-year staggered terms, my opinion is that [Section 5-15-30, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended, does not presently provide a method by which such a change can be effected.

[Section 5-15-30 of the Code](#) provides in part:

If by action of a majority of council, or if fifteen percent of the registered municipal electors present . . . a duly executed petition . . ., in which an election is sought to change the number of council members . . . or to change the method of election of council members, then the municipal governing body shall call a special election . . . [Emphasis added.]

Inasmuch as [Section 5-15-30](#) makes no mention of the procedure to be used to change the terms of office of council members, I think that the rule of statutory construction that 'inclusio unius est exclusio alterius' [2A SUTHERLAND STATUTORY CONSTRUCTION § 47.23 (4th ed. (1973)); see also, [Home Bldg. & Loan Ass'n. v. City of Spartanburg](#), 185 S.C. 313, 194 S.E. 139 (1937)] compels the conclusion that it cannot be used by a city council to change the terms of office of its members. Additionally, [Section 5-15-40, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended, relates only to a city council's initial selection of terms of office and so does not provide any authority to change that initial selection. Cf., [§ 5-5-30, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended.

Clearly, the omission was inadvertent as the General Assembly cannot reasonably be presumed to have intended that cities are to remain forever tied to the original term of office selected; nonetheless, until this gap in the law is closed by amendment, I think that there is no statutory authority for a city to enact an ordinance or to conduct a referendum to change the terms of office of the council members.

If, however, the Council should decide to effect such a change by ordinance or referendum, it must submit the ordinance or the referendum results to the United States Justice Department for its approval pursuant to Section 5 of the 1965 Voting Rights Act.

With kind regards,

Karen LeCraft Henderson
Senior Assistant Attorney General

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