

1976 S.C. Op. Atty. Gen. 258 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4410, 1976 WL 23027

Office of the Attorney General

State of South Carolina

Opinion No. 4410

July 30, 1976

*1 Mr. Russell B. Shetterly
Executive Director
S. C. Association of Counties
1227 Main Street
Columbia, South Carolina 29201

Dear Mr. Shetterly:

You have requested an opinion from this Office as to whether or not the provisions of Section 14–3709 of Act No. 283 of 1975, the ‘home rule’ legislation, apply to all ordinances whether permanent or temporary in nature. Section 14–3709 provides in pertinent part:

The council shall take legislative action by ordinance which may be introduced by any member. . . . All proceedings of council shall be recorded and all ordinances adopted by council shall be compiled, indexed, codified, published by title and made available to public inspection at the office of the clerk of council. [Emphasis added.]

Since the provision specifies ‘all’ ordinances, my opinion is that a county council must comply with the requirements of Section 14–3709 vis a vis temporary ordinances as well as permanent ones. Furthermore, there is no exception made for emergency ordinances [see, § 14–3710]. On the other hand, the council is free to take non-legislative action by way of resolution instead of ordinance and thus escape the requirements of Section 14–3709.

An ordinance is distinctively a legislative act; a resolution, generally speaking, is simply an expression of opinion or mind concerning some particular item of business coming within the legislative body's official cognizance, ordinarily ministerial in character and relating to the administrative business of the municipality. Thus, it may be stated broadly that all acts that are done by a municipal corporation in its ministerial capacity and for a temporary purpose may be put in the form of resolutions, and that matters upon which the municipal corporation desires to legislate must be put in the form of ordinances. . . . Whenever the controlling law directs the legislative body to do a particular thing in a certain manner the thing must be done in that manner. 5 McQUILLIN CORPORATIONS § 15.02 at 43 (3rd Ed. 1969).

I am enclosing herewith a copy of illustrations, listed in the secondary authority hereinabove quoted, of actions that can be taken by resolution under particular charters and laws [Id., § 15.07 at 58–62]. Of course, a county council in South Carolina cannot take any action named in those illustrations by resolution if Act No. 283 or other applicable laws specify that such action be taken by ordinance.

With kindest regards,

Karen LeCraft Henderson
Assistant Attorney General

1976 S.C. Op. Atty. Gen. 258 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4410, 1976 WL 23027