

1976 S.C. Op. Atty. Gen. 334 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4473, 1976 WL 23090

Office of the Attorney General

State of South Carolina

Opinion No. 4473

October 4, 1976

*1 Mr. A. Ray Godshall
City Attorney
City of Gaffney
Gaffney, South Carolina

Dear Mr. Godshall:

We have discussed on last Friday the certain problems raised by you with relation to the application of the Home Rule statute upon the City of Gaffney, with specific reference to the following questions:

'When does the Home Rule provision for Gaffney take effect?

The City of Gaffney, by ordinance, adopted the council form of municipal government on September 7, 1976. The charter was issued on September 10 by the Secretary of State and was delivered on that date to the City Administrator of the City of Gaffney.

Under an amendment to the Home Rule law adopted by the General Assembly in 1976, the effective date under the Home Rule Act is fixed at the date of issuance of the Certificate of Incorporation by the Secretary of State. In this instance, that date is September 10, 1976. Therefore, in accordance with the Home Rule Act, that is the effective date for the commencement of powers under the Home Rule Act.

The Voting Rights Act of 1965, however, requires that any changes in voting procedures must be submitted for Justice Department approval prior to the implementation thereof. Submission of the appropriate documents was made by you as City Attorney by letter dated September 8, 1976, immediately after the adoption of the council form of government by the City of Gaffney.

Under these circumstances, it is my opinion that the new Home Rule form of government may not be implemented by the City of Gaffney before approval by the Department of Justice, Civil Rights Division, is obtained. The Department has 60 days in which to act upon the submission. This period may be extended by the Department, however, should they request further information from the City of Gaffney.

You additionally inquire:

Under prior law governing the City of Gaffney, is there any restriction upon the City Council increasing the compensation of its councilmen and mayor?

The City of Gaffney was incorporated by an act of the General Assembly enacted March 3, 1875, as shown by the records in the Office of the Secretary of State. The only other notations in the records of that office indicate amendments to the charter in 1876 and 1877, neither of which pertains to the problem at hand. Further notations show the dates November 11, 1899, and January 23, 1952, with no explanation therefor. The Act of Incorporation of 1875 provided for a charter identical to that of the Town of Lewisville, and reference to that charter indicates no restrictions with respect to the increase of compensation for members of the city council or the mayor (Acts of 1875, page 241; Acts of 1872, page 73).

It is my opinion that the City of Gaffney is governed subject to the provisions of Sections 47–351, et seq., relating to towns of over 5,000 inhabitants, as indicated in your letter of September 8, 1976, to the Department of Justice. There are no restrictions on increase of the compensation of Councilmen or mayor in these provisions of law. Alternatively, if the City be considered as being governed subject to the provisions of Sections 47–201, et seq., relating to towns of over 1,000 population, it appears that there is no such restriction contained in these provisions.

*2 Based upon the foregoing, it is my opinion that the implementation of the form of Home Rule government selected by the City of Gaffney cannot be implemented until Justice Department approval is consummated and that, under prior provisions of law, there is no restriction upon cities of the population of the City of Gaffney with respect to increasing the compensation of mayor or councilmen during their terms of office.

When final action by the Department of Justice is consummated, the question of the application of Section 47–46 of the Code of Laws can then be appropriately resolved.

With best wishes,
Very truly yours,

Daniel R. McLeod
Attorney General

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