

1976 WL 30506 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 2, 1976

*1 Mr. Edgar P. Kroposki, Jr.
Greenville Chamber of Commerce
P. O. Box 10048
Greenville, South Carolina 29603

Dear Mr. Kroposki:

You have posed several questions concerning Act No. 283 of 1975, the 'home rule' legislation, many of which are answered by the opinion written to the Greenville County Attorney, Mr. Earle, last week. I am enclosing a copy of that opinion herewith.

As to the inquiry concerning the present members of the Greenville County Council filing for one of the new single member seats, Act No. 283 does not require them to resign their present positions before so filing. [See, § 3 of the Act providing only that '[p]ersons serving terms may seek election to the council and assume office if elected prior to the expiration of their terms.'] If one of the hold-overs files for a single member seat and is defeated, neither Act No. 283 nor any other law that I am aware of prevents him from serving out the unexpired portion of his original term.

You also ask about the effect, if any, of a residence change from one election district to another by an elected council member. The only requirement imposed by Act No. 283 as to county council members elected from single member districts is that they 'be elected by the qualified electors of the district in which they reside' [§ 14-3706]. Municipal council members, on the other hand, must be 'residents of the ward during their entire terms of office' [§ 47-91(2)] if elected from wards, i.e., single member election districts. Because of this difference in the provisions of Act No. 283 vis a vis the residency requirements imposed upon county council members and municipal council members elected from single member election districts, my opinion is that an elected county council member can change his residency from one district to another within Greenville County without having to surrender his seat. On the other hand, our Office has also advised that the imposition of a residency requirement upon an elected official lasts throughout his entire term of office (see enclosed letter from Assistant Attorney General Ashworth to Ray Godshall). For this reason my opinion is not free from doubt and, of course, a judicial resolution of the question pursuant to the Uniform Declaratory Judgments Act [§ 10-2001 et seq. of the Code] is the only definitive method by which to determine it.

I was glad to participate in the pre-referendum public hearings in Greenville County and hope that I was of some assistance.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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