

1976 WL 30541 (S.C.A.G.)  
Office of the Attorney General  
State of South Carolina  
September 9, 1976

\*1 Representative William H. Stroud  
Route 2  
Box 202  
Piedmont, South Carolina 29673

Dear Representative Stroud:

You have requested an opinion from this Office as to the South Carolina Supreme Court's decision regarding the so-called fifth form of county government in the action entitled Duncan v. The County of York. The Court, by a 3-2 majority, invalidated the fifth form, saying inter alia:

We think that Form 5 is constitutionally repugnant to Section 7 of Article VIII, because it permits a county to carry on business as before, after the people, speaking through the constitution, have mandated a change.

\*\*\*

It is impossible for a county to operate under Form 5 without enactment by the General Assembly of 'laws for a specific county.' . . . which is prohibited.

The Court went on:

The argument that the entire election should be voided because the fifth form, now declared unconstitutional, was included on the ballot, is without merit. If, in an election to fill a public office, it should develop, after the election has been declared, that one of the losing candidates was ineligible to serve, it would hardly be contended that the election should be voided. If Form 5 had been selected, a new election would be in order. A review of the tabulations discloses that Form 5 was a very poor contender, and it is obvious that the Council-Manager form of government is the choice of the people of York County, indicated in an election conducted fairly. Plaintiff can take comfort in the fact that a new vote can be taken after two years, at the instigation of either the county governing body, or by petition.

With kind regards,

Karen LeCraft Henderson  
Assistant Attorney General

1976 WL 30541 (S.C.A.G.)