

1976 WL 30893 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 13, 1976

\*1 Mr. J. C. Nicholson, Jr.  
Attorney at Law  
P. O. Box 1764  
Orangeburg, South Carolina 29115

Dear Mr. Nicholson:

You have requested an opinion from this Office as to the procedure by which Orangeburg County's form of county government can shift from the board of commissioners form to the council-administrator form pursuant to the provisions of Act No. 283 of 1975, the 'home rule' legislation.

In the November 2, 1976, general election, the Orangeburg County voters elected the individual members of the county board of commissioners, since the board of commissioners form had previously been selected by referendum and the successful primary candidates had theretofore qualified to run for that office in the general election. Nevertheless, because of the State Supreme Court's invalidation of the board of commissioners form, the voters were also to select a new form of county government at last month's general election. The council-administrator form was finally selected in the November 16, 1976, run-off election.

Act No. 283 specifies that the terms of office for members of the board of commissioners begin on the Monday following their election, *i.e.*, on November 8, 1976. *See*, § 14-3785.1, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended (Cum. Supp.). That Act also specifies that the county governing body is to provide, by resolution, for the adoption of the form of government selected in the referendum and file that resolution in the Secretary of State's office, upon which filing the resolution becomes effective. *See*, § 14-3701(a), CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended (Cum. Supp.). The Act also makes clear that the powers possessed by the county council in each of the four council forms vest as soon as one of the forms is selected, *i.e.*, as soon as the resolution adopting the selected form is filed with the Secretary of State. *See*, § 14-3703, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended (Cum. Supp.). Therefore, once the present members of the Orangeburg County Board of Commissioners file the resolution adopting the council-administrator form of government with the Secretary of State, that Board becomes vested with the powers possessed by the council in the council-administrator form and can function fully thereas. *See, e.g.*, §§ 14-3703 through 14-3717 and 14-3740 through 14-3746, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended (Cum. Supp.).

You have also asked for a copy of my notes on the views which I expressed at the October 28, 1976, meeting in Orangeburg; they are nothing more than a few words jotted down and they would no doubt be of little use to you. As to the appointment and recommendatory powers possessed by the legislative delegation under the council-administrator form, I am enclosing herewith copies of earlier opinions directed to Florence County, which opinions are, for the most part, applicable to Orangeburg County as well. Under the board of commissioners form, the legislative delegation would have retained all appointment and recommendatory powers even after January 1, 1980. *See*, § 14-3785.10, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended (Cum. Supp.).

With kind regards,

\*2 Karen LeCraft Henderson

Assistant Attorney General

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