

1975 S.C. Op. Atty. Gen. 148 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4071, 1975 WL 22368

Office of the Attorney General

State of South Carolina

Opinion No. 4071

August 5, 1975

*1 The Honorable Solomon Blatt
Speaker Emeritus
House of Representatives
Post Office Box 365
Barnwell, South Carolina 29812

Dear Mr. Blatt:

You have requested my opinion as to the procedures available to Barnwell County under Act 283 of 1975, the 'home rule' legislation, in selecting one of the five alternate forms of county government provided for therein.

The Act provides two methods by which Barnwell County's new form of government can be determined. The first method, set forth in Section 14-3701(a) of the Act, is by way of referendum. This referendum may be called in one of the three following ways:

- 1) by act of the General Assembly;
- 2) by resolution of the governing body of Barnwell County; or
- 3) by petition of not less than ten percent of the registered electors of Barnwell County.

After the referendum has been called but before it is held, the county must hold at least two public hearings which have been advertised in a newspaper of general circulation in the county. At these hearings, the Barnwell County Legislative Delegation is to explain each of the five alternate forms of government.

After this has been done, the referendum is to be conducted by the county election commission. Each of the five alternate forms must appear on the ballot and, in the event no form receives a favorable majority of the votes, a run-off referendum is to be held two weeks later. At the run-off, the two forms which received the highest number of votes in the first referendum will be voted on again. The governing body of Barnwell County then provides by resolution for the adoption of the form of government selected by the referendum. This resolution must then be filed with the Secretary of State and becomes effective when so filed.

A referendum may also be held to determine whether the members of the governing body will be elected at large or from single member districts. This referendum may be called in one of the three ways stated above.

The General Assembly is to provide for the number of councilmen or commissioners depending on the form of government selected, and if the members of the governing body are to be elected from single member election districts, the General Assembly is also to provide for the composition of those districts.

It is very important to note that if Barnwell County wants to choose one of the five alternate forms of government in a referendum, it must do so prior to July 1, 1976. After July 1, 1976, Barnwell County can no longer make use of this method of election.

The second method of selection is as provided for in Section 14-3701(b) of the Act. If Barnwell County does not hold a referendum prior to July 1, 1976, then it will have that form of government which most nearly resembles the form in effect in Barnwell County immediately prior to that date. The phrase 'form in effect' includes the method of election, number, composition and terms of the present Barnwell County governing body. The General Assembly then, in Section 14-3701(b), determines the new form of government most nearly resembling the form presently in effect in Barnwell County to be the council form of government as prescribed in Article 2 of the Act.

*2 The present governing body of Barnwell County is the Board of Commissioners as provided for in Act No. 603 of 1967, as amended. 55 STAT. Act No. 603 at 1134 (1967). Section 2 of that Act provides that the Board is to be composed of five members who are to serve four-year terms as follows: one member is to be a resident of Blackville School District No. 19; one member is to be a resident of Williston School District No. 29; two members are to be residents of Barnwell School District No. 45; and one member is to be a resident of the county. All members are to be voted on by the qualified electors of the county at large.

If Barnwell County's new form of government is determined by the second method of selection, that is, if Barnwell County does not hold a referendum prior to July 1, 1976, then Barnwell County's new form of government will be the council form as prescribed in Article 2 of the Act. The members of that council will be five in number, their terms of office will be four years and they will be elected by the qualified electors of the county at large. The residency requirements presently imposed upon four of the five members of the Board of Commissioners will, in my opinion, continue to be imposed in a like manner upon four of the five members of the new council.

If the United States Department of Justice still has jurisdiction under the Voting Rights Act to invalidate Barnwell County's method of electing members of its governing body, it is conceivable that the United States Attorney General will disapprove the use of the residency requirement as well as the employment of an at large voting scheme. The Justice Department in recent years has manifested a preference for single member election districts. As to whether or not the approval of the Justice Department would be required if Barnwell County's new form of government is determined by Section 14-3701(b) of the Act and what position it would adopt regarding the implementation of the present election method as to the new form of government are matters upon which I do not at this time wish to speculate.

With kind regards,

Daniel R. McLeod
Attorney General

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