

1975 S.C. Op. Atty. Gen. 190 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4112, 1975 WL 22408

Office of the Attorney General

State of South Carolina

Opinion No. 4112

September 9, 1975

*1 Under the Home Rule Act, a municipal governing body may by ordinance adopt one of the alternative provisions set forth in the Act with regard to the number of municipal council members and the duration and staggering of their terms of office.

TO: Executive Vice President
Municipal Association of South Carolina

QUESTIONS PRESENTED:

You have referred to this office several inquiries directed to you by municipal attorneys and officials regarding the method of adopting the durational terms of and the number of municipal councilmen. These questions, which arise under the recently enacted Home Rule Act, are whether a municipal governing body may by ordinance:

- (a) change the term of office for mayor and councilmen to either two or four years;
- (b) initially stagger the terms of councilmen where the four-year term is adopted; and
- (c) increase or decrease the number of councilmen.

The Act makes available the above alternatives but does not expressly state the method by which they are to be adopted.

STATUTE INVOLVED:

Act 283 of 1975 (Home Rule)

DISCUSSION:

Article 7, entitled 'Nominations and Elections for Municipal Offices,' encompasses §§ 47-90 through 47-103 of the Act. Section 47-91 states: 'Each municipality in this State shall provide by ordinance for the election of its council. . .' (emphasis added). Other sections of the Act set forth the available alternatives with regard to the duration and staggering terms of office (§ 47-92) and the number of councilmen (§§ 47-61, 47-71, 47-81) without specifying the procedure which the municipality is to follow in effecting the decision.

In our opinion the above-referenced first sentence of § 47-91 authorizes the governing body to provide by ordinance for the term of office, including provision for staggered terms, and for the number of councilmen. It would appear that the statutory mandate that each municipality shall provide by ordinance for the election of council includes the establishment by ordinance of the term of office, the mechanism for achieving staggered terms, and the number of councilmen.

Further supporting this view is § 6 of the Act, which provides in part as follows:

Municipal councils shall, as soon as practicable following the final adoption of a form of government provided for in [the Home Rule Act], take action by ordinance to implement the requirements of the form adopted. (emphasis added).

Among these 'requirements', as set forth in Articles 4, 5, and 6, is the selection, from the alternatives provided therein, of the term of office and the requirement that members of council be elected in accordance with the above-referenced Article 7.

It should be noted too, that § 47-91.1 provides a method whereby council or 15% of the registered voters may cause a special election 'to change the number of council members to a number authorized by the form of government under which the municipality is than operating . . .' (emphasis added). This language suggests that the special election is to be held only to vary a determination that is to be made initially by council ordinance.

CONCLUSION:

*2 The opinion of this Office is, therefore, as set forth in the syllabus hereinabove.

Edward E. Poliakoff
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