

1975 S.C. Op. Atty. Gen. 256 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4211, 1975 WL 22508

Office of the Attorney General

State of South Carolina

Opinion No. 4211

December 8, 1975

*1 In order for one of the three forms of municipal government provided for in Act No. 283 of 1975, the ‘home rule’ legislation, to be selected pursuant to Article I of the Act, one form need receive only a plurality of the votes cast.

TO: Frederick H. Brown, Esq.

QUESTION PRESENTED

What portion of the votes cast for one of the three forms of municipal government provided for in Act No. 283 of 1975, the ‘home rule’ legislation, must one of the forms receive in order to be selected pursuant to Article I of the Act?

STATUTES, CASES, ETC., INVOLVED

Act No. 283 of 1975 [59 STAT. Act No. 283 at 692 (1975)].

§§ 23–391 through 23–400.10, 23–400.97 and 23–496, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended.

29 C.J.S. Elections § 241 at 674.

1969 OPS.ATTY.GEN. No. 2766 at 253.

DISCUSSION OF ISSUES

Sections 47–1 through 47–11 of Act No. 283 of 1975 relate to the incorporation of municipalities; Section 47–4 requires the holding of an election at which the registered electors living in the area sought to be incorporated are to vote on the questions of (1) incorporation, (2) the name of the municipality and (3) the form of municipal government if incorporation is favored. Act No. 283 is silent, however, on the question of the number of votes needed in order for one of the three forms of municipal government to receive a favorable result.¹

Section 47–4 of the Act also provides:

The commissioners of election provided for in section shall . . . conduct the election according to the general law governing the conduct of special elections mutatis mutandis.

Sections 23–391 et seq. of the Code of Laws of South Carolina, 1962, as amended, prescribe the conduct of special elections; there is no specific Code provision, however, setting forth the number of votes required in order for a candidate or a proposition to receive a favorable result in a special election.²

In an election involving more than two choices where there is no express requirement that one of the choices receive at least a favorable majority vote in order to be selected, the general law requires only that one of the choices receive a

plurality of the votes cast in order to be selected. See, e.g., 29 C.J.S. Elections § 241; see also, 1969 OPS.ATTY.GEN. No. 2766 at 253.

. . . a ‘plurality’ is the number of votes received by one candidate, in excess of those received by either one of two or more other candidates, and not a majority over both. 29 C.J.S. Elections § 24 at 674.

Inasmuch as a favorable plurality vote requires only a one-vote difference in order to be determinative, there would normally be no necessity for a run-off election in order to select one of the three forms of municipal government. In the extremely unlikely event that two of the three forms were to receive an identical high vote or all three forms an identical vote, however, then the procedure set forth in Section 23–400.97 of the Code, specifying when the Governor may order a new election in the event of a tie vote, would be applicable.

CONCLUSION

*2 The opinion of this office is, therefore, that in order for one of the three forms of municipal government provided for in Act No. 283 of 1975, the ‘home rule’ legislation, to be selected pursuant to Article I of the Act, one form need receive only a plurality of the votes cast.

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Footnotes

- 1 Cf., Section 14–3701(a) of the Act which specifies that one of the five forms of county government must receive a favorable majority vote. Cf., also, Section 47–23 of the Act requiring a majority vote to effect a change in the form of municipal government.
- 2 The only provision of Title 23 of the Code which specifies a majority favorable vote is Section 23–496 thereof which provides that no candidate shall be declared nominated in a first primary election without a majority vote.
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