



ALAN WILSON
ATTORNEY GENERAL

December 13, 2018

Walter H. Sanders, Jr., Esq.
PO Box 840
Fairfax, SC 29827

Dear Mr. Sanders:

You have requested an opinion from this Office regarding the term of a county council chairperson in Allendale County. In your letter, you state the following:

Allendale County has an ordinance rotating the Office of Chairperson of Council to numerically rotate every two (2) years from district to district (copy of ordinance enclosed). At the end of 2016 the chairperson, after serving one (1) year of his two (2) year term, resigned from Council. At that time the chairperson rotated to the next council person whose district was in numerical sequence. The ordinance does not specifically address the issue of what happens when a chairperson leaves office before his two (2) year term expires. The question is whether the current chairperson has a three (3) year term or a two (2) year term. Did he complete the unexpired term of one (1) year and then have two (2) years on a new term or did he rotate into a new two (2) year term only.

In my opinion, there are three possible answers to the question.

(1) The current chairperson has one (1) more year to serve as Chairperson as he completes the unexpired term of one (1) year and has served one (1) year of his new two (2) year term or;

(2) The current chairperson's term ends December 31, 2018 as he has served his two (2) year term and the office of chairperson automatically goes to the council person whose district is in numerical sequence or;

(3) Given the Ordinance does not specifically address the question and I am not aware of any legal or parliamentary standard that applies to the question the Council would have to vote on how the ordinance is to be applied. The Ordinance would therefore need to be amended to specifically address the question in compliance with how the Council voted.

I have advised Council that in my opinion since there is no specific provision in its Ordinance to fill the unexpired term that the Office of Chairperson would automatically rotate to the Council Person whose district is in numerical sequence on January 1, 2019 as the current chairperson has served his two (2) year term. . . .

LAW/ANALYSIS:

We will begin our analysis with a brief history of county governance. In a February 25, 1988 opinion, our Office determined that “it is settled law that counties and municipal corporations have only such powers as are granted to them by legislative enactment.” Op. S.C. Atty. Gen., 1988 WL 383501 (Feb. 25, 1988) (quoting Williams, et al. v. Wylie, et al., 217 S.C. 247, 60 S.E.2d 586 (1950); 56 Am.Jur.2d, Municipal Corporations, etc., Section 193). The South Carolina Constitution requires the Legislature to equip counties with certain powers, duties, and functions and it provides:

The General Assembly shall provide by general law for the structure, organization, powers, duties, functions, and the responsibilities of counties. . . . Alternate forms of government, not to exceed five, shall be established. . . . no county shall be exempted from the general laws or laws applicable to the selected alternative form of government.

S.C. Const, art. VIII, § 7.

In response to the State Constitution, the Legislature provided for “County Government” in the South Carolina Code of Laws. S.C. Code Ann § 4-9-10 et seq. (1976 Code, as amended). Included in the general provisions was a statute regarding the selection and term of a county council chairman:

The council shall select one of its members as chairman, except where the chairman is elected as a separate office, one as vice-chairman and such other officers as are deemed necessary for such terms as the council shall determine, unless otherwise provided for in the form of government adopted. . . .

S.C. Code Ann § 4-9-110 (1976 Code, as amended) (emphasis added).

Although the Allendale County Government website provides otherwise,¹ you have informed us that Allendale County has adopted a council form of government, which is provided for in S.C. Code Ann. § 4-9-310 (1976 Code, as amended). This form of government does not make provision for a county council chairman, but instead states that “[t]he structure, organization, powers, duties, functions and responsibilities of county government under the council form shall be as prescribed” in the general provisions. Id.

Since the council form of government does not address the term of a chairman, our Office must rely on the ordinance that you provided to us. We do not have the ability to independently research this matter,

¹ See Allendale County Government website, located at <https://allendalecounty.com/government.htm>

since, to the best of our knowledge, Allendale County's Code of Ordinances are not published and therefore are not available for our review.

A review of the ordinance that you provided to us indicates that pursuant to section 4-9-110, Allendale County Council determined the term of its chairperson. See Allendale County Code of Ordinances, No. 14-002 (April 11, 2014). The ordinance provided: "The Office of Chairperson of Council shall numerically rotate every two (2) years from district to district. . . ." Id. As you stated in your letter, the ordinance does not address what happens when a chairperson leaves office before his two year term expires.

State law directs that county council "shall" determine the term of its chairman² and the council form of government does not provide otherwise. Based upon the information that you provided to us, we believe that Allendale County Council has the authority to determine whether a chairperson completes the term of a prior chairperson who resigned or begins a new term. In similar circumstances, we have opined that "Council has the power to amend or abolish its own rule, by implication by the taking of some action inconsistent with the rule, or otherwise. If the rule were adopted by ordinance, it would be preferable to amend the rule by ordinance, to avoid problems sometimes arising with amendment by implication." Op. S.C. Atty. Gen., 2017 WL 4707547 (October 9, 2017) (quoting Op. S.C. Atty. Gen., 1985 WL 259134 (February 27, 1985)). That prior conclusion applies to these circumstances as well. Therefore, we advise that the Council has the power to resolve the question presented in your letter as the Council deems appropriate.

CONCLUSION:

In order to answer your question, our Office must rely on the ordinance that you provided to us, since, to the best of our knowledge, Allendale County's Code of Ordinances are not published. Accordingly, based upon South Carolina law and the ordinance that you provided to us, it is our opinion that Allendale County Council has the power to determine whether a chairperson completes the term of a prior chairperson who resigned or begins a new term as the Council deems appropriate. See Op. S.C. Atty. Gen., 2017 WL 4707547 (October 9, 2017) (quoting Op. S.C. Atty. Gen., 1985 WL 259134 (February 27, 1985)).

Sincerely,



Elinor V. Lister
Assistant Attorney General

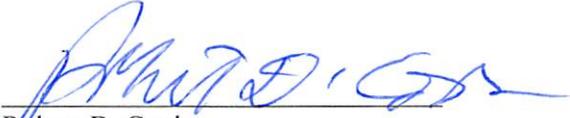
² Under general principles of statutory construction, the word 'shall' is interpreted as mandatory rather than permissive. Op. S.C. Atty. Gen., 1980 WL 120615, at *1 (Jan. 21, 1980) (citing 2A SUTHERLAND STATUTORY CONSTRUCTION § 57.03 (1973)).

Walter H. Sanders, Jr., Esq.

Page 4

December 13, 2018

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General