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The State of South Carolina



Office of the Attorney General

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November 8, 1993

The Honorable Herbert Kirsh
Member, House of Representatives
Box 31
Clover, South Carolina 29710

Dear Representative Kirsh:

Attorney General Medlock has referred your recent letter to me for reply. You have stated that the City of Rock Hill has been unable to obtain preclearance of a reapportionment plan. Apparently because of this failure to obtain preclearance the city has not conducted an election since 1989 and has just postponed, by ordinance the 1993 general election. You have asked the following questions:

1. Can the City of Rock Hill by postponing the 1991 and 1993 general elections extend the terms of office of council members and mayor beyond the required four year terms?
2. Can a municipal officer exercise the duties of his or her office once the term of that office has expired?

The Courts in South Carolina have held that a person holding an elected position will continue to holdover as a de facto officer with the authority to discharge the duties of that office until a successor is elected and qualified. Bradford v. Byrnes, 221 S.C. 255, 705 S.E.2d 228 (1952); Langford v. Board of Fisheries, 217 S.C. 118, 60 S.E.2d 59 (1950); Smith v. City Council of Charleston, 198 S.C. 313, 17 S.E.2d 860 (1941); Heyward v. Long, 178 S.C. 351, 183 S.E. 145 (1935).

It is, however, questionable if the city can extend the terms of these offices by ordinance. The terms of office for mayor and councilmen is set by statute as either two or four year terms. S.C. Code Ann. §5-15-40 (1992). Once a term is selected by

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ordinance a town would not appear to have the authority to extend the terms of office by ordinance beyond the established term.¹ This Office has suggested in the past that cities or counties which have not received preclearance prior to a scheduled election should request a court of competent jurisdiction to postpone the elections as the city or county lacks the authority to amend a statutory provision by ordinance. 6 McQuillin on Municipal Corporations, §21.32

Very truly yours,



Treva G. Ashworth
Senior Assistant Attorney General

TGA:bvc

REVIEWED AND APPROVED BY:



ROBERT D. COOK
Executive Assistant for Opinions

¹ The present situation does not involve a change by the municipality of the term of office from two to four year terms. Such a change would also require Justice Department preclearance.