CHAPTER 5

Selection of Forms of Municipal Government

**SECTION 5‑5‑10.** Forms of municipal government; selection of form of government made by ordinance of municipal council.

 The forms of municipal government in this State shall be as follows:

 (a) the mayor‑council form provided for in Chapter 9;

 (b) the council form provided for in Chapter 11;

 (c) the council‑manager form provided for in Chapter 13.

 All municipalities shall adopt one of these forms in the manner prescribed in this chapter.

 The selection shall be made by ordinance of the municipal council after at least one public meeting. The form selected shall be the form most nearly corresponding to the form in effect in the particular municipality on March 1, 1974, as determined by the municipal governing body; provided, however, that those municipalities which adopted a new form of government through a referendum after March 1, 1974, and prior to June 1, 1975, shall adopt the form selected by the referendum.

 If a municipality failed to adopt one of the above forms of government within fifteen months of December 31, 1977, it shall be considered to have forfeited its articles of incorporation, until such time as the municipality adopts one of these forms of government and certifies the adoption to the office of the Secretary of State. Upon certification by the governing body of the municipality of the adoption of one of the forms of government to the office of the Secretary of State, the articles of incorporation for the municipality shall be reinstated. All actions taken by the governing body municipality during the period of forfeiture shall be deemed to have been ratified by the governing body of the municipality upon reinstatement of the articles of incorporation. The reinstating municipality must not be contiguous to any existing municipality.

HISTORY: 1962 Code Section 47‑26; 1975 (59) 692; 1976 Act No. 656; 1996 Act No. 338, Section 1.

LIBRARY REFERENCES

Municipal Corporations 64.5.

Westlaw Key Number Search: 268k64.5.

C.J.S. Municipal Corporations Section 184.

Attorney General’s Opinions

A municipality which selects a form of government pursuant to the provisions of Article 2 of Part II of Act No. 283 of 1975 [Chapter 5 of Title 5, Code of 1976] the “home rule” legislation, is not required by the provisions of that Act [chapter] to pay a fee to the Office of the Secretary of State for the issuance of an appropriate certificate of incorporation. 1974‑75 Op Atty Gen, No 4089, p 168.

NOTES OF DECISIONS

In general 1

1. In general

Town ordinance which adopted a new form of government effective on a date prior to the beginning of the next fiscal year, “or as soon thereafter as prescribed by State Law” did not prematurely adopt home rule, in violation of state law. Colyer v. Thomas (S.C. 1977) 268 S.C. 455, 234 S.E.2d 862.

Election held after town adopted the council‑manager form of government, but before the beginning of the next fiscal year, when the change became effective, was to be held under provisions of previous law. Colyer v. Thomas (S.C. 1977) 268 S.C. 455, 234 S.E.2d 862.

Provisions for a runoff election contained in Code 1962 Section 47‑94 [Code 1976 Section 5‑15‑60] did not apply to an election held prior to the effective date of the change of form of government under the Home Rule Act. Colyer v. Thomas (S.C. 1977) 268 S.C. 455, 234 S.E.2d 862.

**SECTION 5‑5‑20.** Petition or ordinance calling for special election to determine form of government after date of official council action.

 After the date of official council action if a petition executed by fifteen percent of the qualified electors is presented to the municipal governing body, certified by the county election commission, for an election to determine or change the form of government or if the municipal governing body shall by ordinance call for such an election, the municipal governing body shall conduct a special election not later than ninety days nor earlier than thirty days after the receipt of the certified petition or the passage of the council ordinance; provided, however, that no referendum shall be held pursuant to ordinance of the municipal council sooner than two years following the date the form of municipal government is initially selected pursuant to the provisions of this chapter.

HISTORY: 1962 Code Section 47‑27; 1975 (59) 692; 1976 Act No. 642.

LIBRARY REFERENCES

Municipal Corporations 108.6.

Westlaw Key Number Search: 268k108.6.

C.J.S. Municipal Corporations Sections 311 to 313, 316, 325 to 326.

Attorney General’s Opinions

Discussion of questions raised by the Lexington County Registration and Election Commission relating to the Town of Chapin and a dispute relating to a proposed change of the form of government. S.C. Op.Atty.Gen. (August 25, 2014) 2014 WL 4382447.

Discussion of the timing and duties involved in the special election regarding the form of government for the Town of Chapin. S.C. Op.Atty.Gen. (August 14, 2014) 2014 WL 4253408.

A court would likely find that the town of Whitmire retains its original mayor‑council form of government because the election conducted to change the form of government was not conducted during the time specified by this section, and the town failed to gain preclearance from the Department of Justice. S.C. Op.Atty.Gen. (May 24, 2011) 2011 WL 2214067.

The provisions of Section 5‑5‑20 which is a special law concerning home rule referendums would control over the general provisions established by Section 7‑13‑355. Thus, a municipality may hold a referendum to change the form of government on January 12, 1988, the date of the regularly scheduled town election. 1987 Op Atty Gen, No. 87‑88, p 237.

**SECTION 5‑5‑30.** Determination of form of government by governing body effective until changed by election; subsequent elections.

 Until changed by an election, the selection of the form of government as initially determined by the governing body by ordinance shall remain effective. The ordinance selecting the form of government shall be filed in the office of the Secretary of State who shall issue an appropriate certificate of incorporation to the municipality. No other such election shall be held for a period of four years after an election is held pursuant to Section 5‑5‑20.

HISTORY: 1962 Code Section 47‑28; 1975 (59) 692.

LIBRARY REFERENCES

Municipal Corporations 16.

Westlaw Key Number Search: 268k16.

C.J.S. Municipal Corporations Section 36.

Attorney General’s Opinions

An ordinance which implements a change in the form of government more than a year after the date of the election is invalid. S.C. Op.Atty.Gen. (November 1, 2016) 2016 WL 6646160.

Prior opinion adhered to, that an ordinance reflecting a successful change in the form of municipal government must be filed with the Secretary of State pursuant to Section 5‑5‑30. S.C. Op.Atty.Gen. (June 11, 2012) 2012 WL 2364242.

Section 5‑5‑30 requires that copy of ordinance changing form of government for municipality to be filed with Secretary of State. 1993 Op Atty Gen No. 93‑64.

There is no statutory requirement that resolution be filed with Secretary of State to effectuate new form of county government. However, county would not be prohibited from filing copy of ordinance with Secretary of State. 1993 Op Atty Gen No. 93‑64.

**SECTION 5‑5‑40.** Preparation of election ballot; majority of votes cast by qualified electors required to effect change in form of government.

 In any election to determine a change of a form of government of a municipality, the question must be framed by the governing body and printed on the prepared ballot in the following form: “Shall the municipality of (name of municipality) change its form of government from (form selected by council or by prior election) to (form or forms requested by petition or by ordinance)?

Yes []

No []

 Those in favor of the question shall deposit a ballot with a check or cross mark in the square after the word ‘YES’, and those voting against the question shall deposit a ballot with a check or cross mark in the square after the word ‘NO’.”

 To effect a change in the form of government a proposed form must receive a majority of the votes cast by the qualified electors of the municipality in the election.

HISTORY: 1962 Code Section 47‑29; 1975 (59) 692; 1990 Act No. 342, Section 1.

LIBRARY REFERENCES

Municipal Corporations 108.10.

Westlaw Key Number Search: 268k108.10.

C.J.S. Municipal Corporations Sections 314, 319 to 324.

**SECTION 5‑5‑50.** Notice, expenses and conduct of elections.

 Notice of all special elections relating to a change in form of government shall be published at least three weeks in advance in a newspaper of general circulation in the municipality in which such election is to be held. The municipality shall pay all expenses incurred in the conduct of any election. Elections shall be conducted in accordance with the provisions of general law regulating special elections as they apply to referendums in this State, mutatis mutandi.

HISTORY: 1962 Code Section 47‑29.1; 1975 (59) 692.

LIBRARY REFERENCES

Municipal Corporations 108.10.

Westlaw Key Number Search: 268k108.10.

C.J.S. Municipal Corporations Sections 314, 319 to 324.

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

Referendums held pursuant to the Home Rule Act would not be classified as general elections, and hence the results of the election would not be canvassed by the Board of State Canvassers. 1974‑75 Op Atty Gen, No 4103, p 181.

**SECTION 5‑5‑60.** Service of existing members of governing body after adoption of or change to one of alternate forms of government.

 Upon initial adoption of or on any change to one of the alternate forms of government, all members of the existing governing body shall continue to serve their elected terms and until their successors are elected and qualify.

HISTORY: 1962 Code Section 47‑29.2; 1975 (59) 692.

LIBRARY REFERENCES

Municipal Corporations 149.

Westlaw Key Number Search: 268k149.

C.J.S. Municipal Corporations Section 361.

United States Supreme Court Annotations

Elections, voting rights preclearance requirements, utility districts, bail out provisions, see Northwest Austin Mun. Utility Dist. No. One v. Holder, U.S.Dist.Col.2009, 129 S.Ct. 2504, 557 U.S. 193, 174 L.Ed.2d 140.

Attorney General’s Opinions

Previous opinions are overruled to the extent they determined that Section 5‑5‑60 prevents immediate implementation of a change in the form of municipal government. S.C. Op.Atty.Gen. (June 11, 2012) 2012 WL 2364242.

Any change in the form of municipal government must be submitted to the United States Department of Justice for pre‑clearance pursuant to Section 5 of the 1965 Voting Rights Act, 42 U.S.C.A. Section 1973c, before it can be implemented. S.C. Op.Atty.Gen. (March 17, 2010) 2010 WL 1370083.

If the referendum to change the form of government passes on or after July 1, 2010, then the implementation date of the change would occur on July 1, 2014. S.C. Op.Atty.Gen. (March 17, 2010) 2010 WL 1370083.

(1) Under Section 47‑29.2, [1976 Code Section 5‑5‑60] a city council member who fails to win re‑election is still able to serve out the term he is serving; (2) In the North Augusta County Council race, crossover voting is handled as follows: (a) If a person votes a straight Democratic Party ticket and then votes for the Republican candidate for Mayor, you would count the vote for Mayor and six votes for the Democratic candidates for Council; (b) If a person votes a straight Democratic ticket and votes for one Republican candidate for Council you would count the vote for the Democratic Mayor and not count the votes for the Council races. 1976‑77 Op Atty Gen, No 77‑162, p 133.

A change in the form of government from mayor‑council to council may not come into effect until preclearance under the Voting Rights Act of 1965 is received from the United States Department of Justice. 1988 Op Atty Gen, No. 88‑40, p 122.