



ALAN WILSON
ATTORNEY GENERAL

February 26, 2024

The Honorable Daniel Gibson
Member
South Carolina House of Representatives
2607 Highway 221 South
Greenwood, South Carolina 29646

Dear Representative Gibson:

We received your letter requesting an opinion concerning the process of adopting an ordinance by petition. Specifically, you ask the following questions:

1. In your opinion, does SC Code § 4-9-1220 grant qualified electors the right to petition their county council to vote on their ordinance initiative petitions which have been signed by 15% of qualified electors?
2. In your opinion, do county councils have any statutory authority under SC Code § 4-9-1230, or any other section, to 'block' any qualified elector-sponsored ordinance initiative petitions from ever appearing on any ballot after they fail to adopt the requested ordinances?

Law/Analysis

Article 13 of chapter 9 of title 4 of the South Carolina Code (2021) provides a mechanism by which the electorate can propose or reject certain county ordinances. Section 4-9-1210 of the South Carolina Code (2021), contained in this article, provides:

The qualified electors of any county may propose any ordinance, except an ordinance appropriating money or authorizing the levy of taxes, and adopt or reject such ordinance at the polls. Any initiated ordinance may be submitted to the council by a petition signed by qualified electors of the county equal in number to at least fifteen percent of the qualified electors of the county.

Section 4-9-1220 of the South Carolina Code (2021) similarly allows electors to petition for the repeal of certain ordinances, stating:

Within sixty days after the enactment by the council of any ordinance authorizing the issuance of bonds, notes or other evidence of debt the repayment of which requires a pledge of the full faith and credit of the county, or requires

the approval of the issuance of bonds by a public service district within the county a petition signed by qualified electors of the county equal in number to at least fifteen percent of the qualified electors of the county, or if such ordinance relates to a bond issue for a public service district, fifteen percent of the qualified electors of the district may be filed with the clerk of the county council requesting that any such ordinance be repealed; provided, however, that this section shall not apply to bond issues approved by referendum or to notes issued in anticipation of taxes.

Thus, to answer your first question, section 4-9-1210 allows electors to petition their county council for the adoption of a proposed ordinance so long as that ordinance does not appropriate money or authorize the levy of taxes. Section 4-9-1210 requires the petition be signed by at least fifteen percent of the qualified electors in the county for it to be submitted to the county council.

Once submitted to the county council, it may either pass or repeal (as the case may be) the ordinance. If the county council fails to pass or repeal the ordinance, section 4-9-1230 of the South Carolina Code (2021) requires the county to hold an election allowing the electors to decide whether to adopt or repeal the ordinance. This provision states:

If the council shall fail to pass an ordinance proposed by initiative petition or shall pass it in a form substantially different from that set forth in the petition therefor or if the council shall fail to repeal an ordinance for which a petition for repeal has been presented, the adoption or repeal of the ordinance concerned shall be submitted to the electors not less than thirty days nor more than one year from the date the council takes its final vote thereon. The council may, in its discretion, and if no regular election is to be held within such period, provide for a special election. All county councils shall be bound by the results of any such referendum.

S.C. Code Ann. § 4-9-1230. This provision clearly requires the county council to either enact the ordinance (or repeal it) or allow the voters to decide whether enact (or repeal) the ordinance. However, we note the electorate does not have an opportunity to vote until after the county council takes a final vote on the ordinance.

In your letter, you ask whether a county council may “block” elector-sponsored ordinances from appearing on a ballot after they fail to adopt the petitioned ordinance. In 1995, our Supreme Court considered whether a county could refuse to place an ordinance proposed by electors on the ballot. Focus on Beaufort Cnty. v. Beaufort Cnty., 318 S.C. 227, 228, 456 S.E.2d 910, 911 (1995). The county argued the ordinance presented violated both the South Carolina Constitution and section 4-9-1210. Id. The Court found no constitutional violation but determined the ordinance “restricts County Council’s authority over the treasury and, thus, defeats the plain legislative intent of section 4-9-1210.” Id. at 231, 456 S.E.2d at 912. This determination comports with our previous finding that “[s]ection 4-9-1210 appears to permit the proposal of any referendum except one

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appropriating money or authorizing the levy of taxes, general laws must be taken into account and cannot be set aside by the initiative and referendum process unless permitted by the general law in question; thus, some limits to the process are implicit.” Op. Att’y Gen., 1989 WL 406232 (S.C.A.G. Dec. 21, 1989). However, we do not find a county council can refuse to place a proposed ordinance on the ballot so long as it complies with constitutional and statutory law. Section 4-9-1230 clearly requires a county council to conduct an election allowing the electorate to decide whether to accept or reject the proposed ordinance if the county council fails to adopt the ordinance or if it passes it in “a form substantially different from that set forth in the petition.” In addition, the election must take place “not less than thirty days nor more than one year from the date the council takes its final vote thereon.” S.C. Code Ann. § 4-9-1230. As such, if a county council refuses to adopt the proposed ordinance, then it is required to submit the ordinance to the electors no less than thirty days and no more than one year from the date it takes its final vote on the proposed ordinance.

Conclusion

As explained above, section 4-9-1210 of the South Carolina Code gives electors the authority to petition their county council to enact an ordinance and requires the signatures of at least fifteen percent of the qualified electors of the county. If the county council either fails to pass the ordinance as presented by the electors or passes the ordinance in a form that is substantially different than the ordinance proposed by the electors, the county council must submit the ordinance to the electors “not less than thirty days nor more than one year from the date the council takes its final vote thereon.” S.C. Code Ann. § 4-9-1230. The only circumstance under which a county council can refuse to place the proposed ordinance on the ballot after it refuses to enact it is if the ordinance violates constitutional or statutory law. Barring such a violation, we do not find any authority by which a county council can “block” an ordinance from appearing on the ballot should it fail to adopt it.

Sincerely,



Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General