



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

June 14, 2022

Gene Barton, Esq.
Attorney for City of Okolona
102 N. Church Street
Okolona, Mississippi 38860

Re: Change from Special Charter to Code Charter

Dear Mr. Barton:

The Office of the Attorney General has received your request for an official opinion.

Background

According to your request, the City of Okolona (the “City”) has a Special Charter and currently operates with a mayor and six council members. Okolona’s Special Charter has many outdated and inapplicable provisions, and the newly elected city council (the “Council”) is interested in changing to a Code Charter municipality.

Questions Presented

1. Section 21-3-1 of the Mississippi Code indicates that an election is required to change from a Special Charter form of government to a Code Charter form of government. Is a petition circulated by voters necessary, or may the Council simply make a resolution to initiate the election process?
2. If the City were to change to a Code Charter form of government, when would it take effect, and how would the City transition from a six member council to a five member board of aldermen?

Brief Response

1. The required election may be initiated by the governing authorities adopting a resolution that provides for a special election on the question of changing to a Code Charter form of government, unless the City’s Special Charter includes specific provisions calling for such an election, in which case the Special Charter would take precedence over Section 23-15-859.

2. If the electors choose to change to a Code Charter form of government, before the next scheduled municipal elections as specified by Sections 23-15-171 and 23-15-173, the municipality will apportion wards for the election of five aldermen in accordance with Section 21-3-7.

Applicable Law and Discussion

“Absent a valid order from a court of competent jurisdiction, in order for a municipality operating under a private or special charter to change its [form] of government there must be authorization therefor in said charter or in the general laws of the State.” MS AG Op., *Meadows* at *2 (Jan. 2, 1985). See MS AG Op., *Brock* at *1 (Sept. 3, 2021) (Opining that if a Special Charter is silent on an issue, then general statutory provisions apply.) As this office has stated previously, Section 21-3-1 sets forth the procedure for a municipality not currently operating under a Code Charter to adopt a Code Charter form of government. MS AG Op., *Yarborough* at *1 (Oct. 15, 2010). Section 21-3-1 states:

Any municipality not now operating under a “Code Charter” may acquire such charter and come under the provisions of this chapter by a majority vote of the electors therein, cast at a general or special election held for such purpose. At such election, the propositions to be voted on shall be “FOR THE CODE CHARTER” and “AGAINST THE CODE CHARTER.” If a majority of the legal votes cast are in favor of adopting the code charter, then the municipality shall be subject to and governed by all the following provisions of this chapter, and the result of the election shall be certified to the secretary of state, who shall make a record of same in his office. If a majority of the votes cast shall be against the code charter, the municipal authorities shall so enter of record, and another election submitting the question shall not be held within four years thereafter. After the rejection of the provisions of the code charter by a municipality, and until its acceptance thereof as herein provided, the corporate powers, rights and franchises thereof shall be and remain as now provided by law.

As stated in Section 21-3-1, a majority of the qualified electors must vote at a special or general election held for the specific purpose of voting for the Code Charter form of government or against the Code Charter form of government.

While Section 21-3-1 does not specify how to initiate the election to determine whether the qualified electors of a municipality are in favor of a change in government, Section 23-15-859, entitled “Municipal special elections,” sets forth the procedure to follow when a statute authorizes a municipal special election but fails to specify the time within which the election shall be called or the notice that shall be given. It is the opinion of this office that, unless Okolona’s Special Charter sets out a process that conflicts with that in Section 23-15-859, the governing authorities of the City, following the mandates of Section 23-15-859, may adopt a resolution providing for a special election on the issue of changing to a Code Charter form of government. If the Special Charter sets out provisions in conflict with Section 23-15-859, the process as laid out in the charter shall be followed instead. Section 23-15-859 states, in pertinent part:

[T]he governing authorities of the municipality shall, by resolution, fix a date upon which the election shall be held. The date shall not be less than twenty-one (21) nor more than thirty (30) days after the date upon which such resolution is adopted, and not less than three (3) weeks' notice of the election shall be given by the clerk by a notice published in a newspaper published in the municipality once each week for three (3) weeks next preceding the date of the election, and by posting a copy of the notice at three (3) public places in the municipality. Nothing herein, however, shall be applicable to elections on the question of the issuance of the bonds of a municipality or to general or primary elections for the election of municipal officers.

The provisions of this section shall be applicable to all municipalities of this state, whether operating under a code charter, special charter or the commission form of government, except in cases of conflict between the provisions of the section and the provisions of the special charter of a municipality, or the law governing the commission form of government, in which cases of conflict the provisions of the special charter or the statutes relative to the commission form of government shall apply.

If a majority of the electors vote to change to a Code Charter form of government, then the results shall be certified to the Secretary of State who shall record such in his office. However, if the vote is against changing to a Code Charter form of government, then another election on the issue cannot be held for another four years. Miss. Code Ann. § 21-3-1.

While Section 21-3-1 states that if a majority of the electorate chooses a Code Charter form of government, “then the municipality shall be subject to and governed by all the following provisions of this [Code Charter] chapter,” practically speaking, the current mayor and council members are entitled to serve the remainder of their terms. *See* MS AG Op., *Noble* at *1 (Feb. 14, 1989)(“[A]n elected official is authorized to serve the remainder of his term although the district lines have been legally altered”) The governing authorities will have to apportion wards for the election of five aldermen in accordance with Section 21-3-7, which states that in municipalities having a total population of less than 10,000, there shall be five aldermen.

Sections 23-15-171 and 23-15-173 set forth the primary and general election cycles for Code Charter municipalities. A general election for all municipal officers elected by the people in a Code Charter municipality shall be held on the first Tuesday after the first Monday in June every four years. Miss. Code Ann. § 23-15-173. Primary elections shall be held on the first Tuesday in April preceding the general election. Miss. Code Ann. § 23-15-171. The next election cycle for Code Charter municipalities will be in 2025. MISSISSIPPI SECRETARY OF STATE, <http://www.sos.ms.gov> (last visited May 17, 2022). “Municipalities are statutorily required to conduct elections as scheduled unless otherwise ordered by a court of competent jurisdiction.” MS AG Op., *Bryant* at *1 (Jan. 23, 2001). Therefore, it is the opinion of this office that if the voters of Okolona choose to switch the form of government from a Special Charter to a Code Charter, then the new mayor and five aldermen will be elected in 2025 in accordance with the statutes.

Gene Barton, Esq.

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If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Misty Monroe*

Misty Monroe
Special Assistant Attorney General

OFFICIAL OPINION