

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-734-3970

February 5, 1988

The Honorable Steve Lanford
Member, House of Representatives
333-D Blatt Building
Columbia, South Carolina 29211

Dear Representative Lanford:

By your letter of January 6, 1988, you have asked that this Office review an opinion written on November 13, 1979 to Spartanburg County Attorney Roy McBee Smith by then-Senior Assistant Attorney General Karen L. Henderson. That opinion concluded that because local legislation adopted by the General Assembly in 1908 created the position of Register of Mesne Conveyances for Spartanburg County, after January 1, 1980 Spartanburg County Council would be free, under home rule, to change the position from elective to appointive. See Section 3 of Act No. 283 of 1975. To abolish the office completely would require an act of the General Assembly to amend Section 30-5-10 of the Code of Laws of South Carolina (1976).

The standard of review of opinions previously issued by this Office is to determine whether such opinion is "clearly erroneous." If that standard is met, the previously-issued opinion will be superseded. Applying this standard to the opinion of November 13, 1979 described above, we are of the opinion that the conclusion reached therein was correct. Thus, the opinion still represents the opinion of this Office on the issue.

The basis for this opinion, as noted therein, was Section 3 of Act No. 283 of 1975, the Home Rule Act. In relevant part, that section provides:

All operations, agencies and offices of county government, appropriations and laws related thereto in effect on the date the change in form becomes effective shall remain in full force and effect until otherwise implemented by ordinance of the council pursuant to this act. Provided, however, that county councils shall not enact ordinances in conflict with existing law relating to their respective counties and all

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such laws shall remain in full force and effect until repealed by the General Assembly, or until January 1, 1980, whichever time is sooner,

As noted in the opinion, the act creating the position of Spartanburg County Register of Mesne Conveyances was an act relating specifically to Spartanburg County adopted long before the advent of Home Rule. The authority of a county council to modify local legislation, acting pursuant to this provision in the Home Rule Act, was affirmed in Graham v. Creel, 289 S.C. 165, 345 S.E.2d 717 (1986) (Horry County Council had authority, under this section, to abolish a legislatively-created police commission after January 1, 1980).

In conclusion, the opinion of November 13, 1979 remains the opinion of this Office. Spartanburg County Council would have the authority after January 1, 1980, to modify by ordinance the local legislation creating the position of Spartanburg County Register of Mesne Conveyances, to make the position appointive rather than elective. Abolition of the position could be accomplished only by act of the General Assembly to amend Section 30-5-10 of the Code. 1/

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions

cc: Roy McBee Smith, Esquire
Spartanburg County Attorney

1/ It should be noted that changing a position from elective to appointive is a change under Section 5 of the Voting Rights Act of 1965, as amended, which requires preclearance under the Act prior to effectiveness or implementation of the change.