

1984 WL 249804 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 13, 1984

*1 Louis P. HERNs
Research Assistant
Labor, Commerce and Industry Committee
House of Representatives
407 Blatt Building
Columbia, South Carolina 29201

Dear Mr. HERNs:

Think you for yours of December 21, 1983. You have inquired whether certain proposed legislation (bill) pending before the House Labor, Commerce and Industry Committee is constitutional. The bill is not identified by number, however, the draft reviewed was dated September 14, 1983 and entitled 'A Bill to Authorize the Public Service Commission to Administer Uniform Service Rights and Responsibilities of Electric Suppliers Throughout the State Including Specific Responsibilities Within Municipal Corporate Limits.'

The effect of the bill is to permit an electrical supplier in a geographical area annexed by a municipality to continue providing service in the absence of a finding by the Public Service Commission that the supplier is providing 'inadequate, undependable, or unreasonable discriminatory service.' § 5. Pursuant to § 2 of the bill, the Public Service Commission may also permit, among other things, the reassignment of the service area.

This Office has previously concluded that the consent of the municipality required by Art. VIII, § 15, Constitution of South Carolina 1895 (as amended) is applicable to electrical suppliers operating after annexation facilities which existed in areas prior to their annexation. [See attached]. This Office, however, recognized the existence of contrary authority and noted that such 'conclusion . . . [was] less than certain.' Op. Atty. Gen'l., Feb. 13, 1981, JAMES M. HOLLY, Assistant Attorney General.

After a review of these opinions and an update of the authorities cited therein I find no subsequent authority that suggests the prior opinions should be modified or reversed. Thus, in conclusion, since the proposed bill negates the constitutional requirement of prior consent by a municipality in several respects it is most probably violative of Art. VIII § 15 of the South Carolina Constitution 1895 (as amended).

Very truly yours,

Edwin E. Evans
Senior Assistant Attorney General

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