1976 WL 30421 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
April 5, 1976

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Dear Mr. Garvin:
You have requested my opinion as to the status of the Aiken County Public Service Authority, assuming that the South Carolina Supreme Court invalidates Act No. 542 of 1973 [58 STAT. 914 (1973)], which Act created that Authority. As I understand the facts as related in your letter, the Aiken County Board of Commissioners, upon being advised that Act No. 542 of 1973 might be unconstitutional, enacted Ordinance No. 74-8-24 on August 14, 1974, recreating thereby the Aiken County Public Service Authority and prescribing its duties and powers, inter alia. The provisions of the Ordinance are virtually identical to those of Act No. 542. I also understand that in the action entitled Murphree v. Mottel, which is currently before the State Supreme Court, the lower court's holding that Act No. 542 of 1973 is, in fact, unconstitutional has not been appealed from and that, therefore, the lower court's decision on that issue is the law of the case.

I have serious doubts as to the validity of Ordinance No. 74-8-24 as far as it attempts to create an autonomous body. I refer particularly to Sections 1, 2, 5 (especially (1), (2), (6), (16), (18), (23), (24), (25), (26) and (28) thereunder), 6 and 10 thereof. While it is true that Act No. 283 of 1975, the 'home rule' legislation, does grant sweeping new powers to county governing bodies, I find nothing in that Act that would, or, indeed, could, empower a county governing body to create, in effect, an independent political subdivision of the State. In fact, the same provision of Act No. 283 [§ 14-3703(6)] which grants to county governing bodies the authority 'to establish such agencies, departments, boards, commissions, and positions in the county as may be necessary and proper to provide services of local concern for public purposes,' also requires the county governing body to 'regulate, modify, merge or abolish such agencies departments, boards, commissions and positions [emphasis added].' Moreover, the authority for a county to engage in the water and sewer businesses is granted by the South Carolina Constitution itself, in Section 16 of Article VIII, and not solely by Act No. 283. The constitutional provision reads in part:
[a]ny county . . . may, upon a majority vote of the electors voting on the question in such county . . . , acquire by initial construction or purchase and may operate water, sewer, . . . systems and plants . . . . [Emphasis added.]

Cf., § 14-3703(5) of Act No. 283 of 1975, authorizing each county government 'to assess property and levy ad valorem property taxes and uniform service charges, . . . and make appropriations for functions and operations of the county, including, but not limited to, appropriations for . . . water treatment and distribution; sewage collection and treatment; . . . .' It appears to me, therefore, that both the State Constitution and the 'home rule' legislation contemplate that the county itself, if so authorized, is to engage in the water and sewer businesses and is not to delegate that power, at least in terms of final authority and responsibility, to another body. Hopefully, the State Supreme Court will address itself to the question of the degree of control which the county governing body must retain unto itself in these areas in the action hereinabove referred to.

***2** The question which you have raised is the forerunner of many that will be forthcoming and the seriousness of the problem which it presents should be judicially determined at the earliest possible date. Its authoritative resolution by

a court would also make clear the course which should be followed in future years when such matter come before the individual counties, as they undoubtedly will.
Very truly yours,

Daniel R. McLeod
Attorney General

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