1976 S.C. Op. Atty. Gen. 243 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4403, 1976 WL 23021

Office of the Attorney General

State of South Carolina
Opinion No. 4403
July 26, 1976

***1** Ratified Bills R868 and R864 are violative of Article VIII, Section 7, as laws for a specific county.

TO: Harold E. Trask, Jr.
Executive Assistant to the Governor

QUESTION PRESENTED:

Whether House Bill H.4281 (R868), a Bill to provide for the levy of taxes for Chesterfield County for School and County Purposes for the fiscal year beginning July 1, 1976, and House Bill H.4242 (R864), a Bill to provide for the levy of taxes for Marlboro County for School and County purposes for the fiscal year beginning July 1, 1976, are violative of the constitutional prohibitions against special legislation.

AUTHORITIES:

Article III, Section 34, Article VIII, Section 7, Constitution of the State of South Carolina, 1895, as amended.

Section 14–3711, 1962 Code of Laws of South Carolina, as amended.

Booth v. Grissom, 265 S.C. 190, 17 S.E.2d 223 (1975);

Distin v. Bolding, 240 S.C. 545, 126 S.E.2d 649 (1962);

Kleckley v. Pulliam, 265 S.C. 177, 217 S.E.2d 217 (1975);

Knight v. Salisbury, 262 S.C. 565, 206 S.E.2d 875 (1974);

Mills Mill v. Hawkins, 232 S.C. 515, 103 S.E.2d 14 (1957);

Morris v. Scott, 258 S.C. 435, 189 S.E.2d 28 (1972);

Salley v. McCoy, 182 S.C. 249, 189 S.E. 196 (1936).

DISCUSSION:

There are two provisions in the 1895 Constitution of the State of South Carolina that prohibit the enactment of special legislation. Article III, Section 34, states in part:
The General Assembly of this State shall not enact any local or special laws concerning any of the following subjects or for any of the following purposes, to wit: . . .
IX. In all other cases, where a general law can be made applicable, no special law shall be enacted: . . .;

In its discussion of this prohibition, the Supreme Court of South Carolina stated in Salley v. McCoy, 182 S.C. 249, 189 S.E. 196:
The clear intention of the framers of the Constitution of 1895 was by Section 34 of Article 3, to prohibit the enactment of special laws in all cases where a general law can be made applicable. . . . The words, 'in all other cases' were not intended to limit the scope of subsection 9, but rather to extend the scope of section 34 as to include any subject on which a general law can be made applicable. 182 S.C. at 267.

The second of these prohibitions is found in Article VIII, Section 7, the last sentence of which reads as follows:
No laws for a specific county shall be enacted and no county shall be exempted from the general laws or laws applicable to the selected alternate form of government.

'Read alone, this prohibition against the enactment of laws for a specific county could be given such a broad interpretation that it would prohibit the enactment of a law establishing a state park or a branch of a state college in a designated county. The prohibition against laws for a specific county cannot be given an interpretation which might result if the words were taken by themselves and out of context. The prohibition was not intended to create an area in which no laws can be enacted. Rather, the prohibition only means that no law may be passed relating to a specific county which relates to these powers, duties, functions and responsibilities, which under the mandated systems of government, are set aside for the counties.' Kleckley v. Pulliam, 265 S.C. 177, 217 S.E.2d 217 (1975).

***2** A careful reading of these two provisions reveals that they admit a subtle distinction that operates so as to render Article VIII, Section 7, the more extensive prohibition of the two. Article VIII, Section 7, will not permit a special act, as will Article III, Section 34, in the event that a general law cannot be made applicable. Thus, Article VIII, Section 7, will prohibit some types of acts otherwise constitutionally permissible under Article III, Section 34.

For example, Article III, Section 34, will not prevent the General Assembly from establishing a special purpose district in a county by means of a special act. Mills Mill v. Hawkins, 232 S.C. 515, 103 S.E.2d 14; Distin v. Bolding, 240 S.C. 545, 126 S.E.2d 649. In spite of this line of authority, the Supreme Court held in Knight v. Salisbury, 262 S.C. 565, 206 S.E.2d 875, that Article VIII, Section 7, operates so as to prohibit the creation of such a district. Speaking for the Court, Justice Littlejohn stated:
There is a sound reason for curtailing the power of the General Assembly to create special purpose districts within a county. If, despite the prohibition of laws for a specific county, the General Assembly may continue to carve a given county into special purpose districts, a frightful conflict would exist between the power of the General Assembly and the power of the county governments. . . . Such a result could well be chaotic and home rule intended by (Article VIII) Section 7 would be frustrated in whole or in part since the result could well be that the governing body in each county contemplated by the draftsmen of Section 7 would have little or no power left. 262 S.C. at 572, 573.

The two ratified bills in question, R868 and R864, constitute the annual appropriations for the operation of Chesterfield and Marlboro Counties, respectively. Bills of this type are undoubtedly special or local legislation, but similar to the earlier treatment of special acts creating special purpose districts, they have not been considered prohibited by Article III, Section 34.
. . . [T]he prohibition against special legislation does not apply in the case of special legislation relating to the fiscal affairs of the county nor to special legislation dealing with local county government. Gandy v. Walker, 214 S.C. 451, 53 S.E.2d 316; Mills Mill v. Hawkins, 232 S.C. 515, 103 S.E.2d 14. In fact, Chapters 17 through 62 of Title 14, Volume 3, South Carolina Code of Laws, 1962, as amended, is for the most part nothing but special legislation dealing with the local affairs of each of the 16 counties of this State. Morris v. Scott, 258 S.C. 435, 441, 189 S.E.2d 28, 31.

In response to the mandate of Article VIII of the Constitution, that home rule be given to the counties and that county government should function in the county seats rather than at the State Capitol, the General Assembly enacted Act 283 of 1975, the Home Rule Act. A portion of that Act, subsequently codified as Section 14–3711 of the Code, deals with the powers of county government, and provides that the governing body of a county shall:

***3** . . . adopt annually and prior to the beginning of the fiscal year operating and capital budgets for the operation of county government.

Both Chesterfield and Marlboro Counties have selected forms of county government pursuant to Act 283 of 1975 and will be able to exercise the powers granted in Section 14–3711, as soon as their selected forms of government receive Justice Department approval under the Voting Rights Act of 1965.

Undoubtedly the fiscal affairs of a county are within that area of matters that are of a purely local concern within which the General Assembly may not act. See Kleckley, supra. In support of this conclusion is the case of Booth v. Grissom, 263 S.C. 190, 217 S.E.2d 223, where the lower court struck down the Horry County Supply Bill as violative of both Article VIII, Section 7, and Article III, Section 34. The Supreme Court dismissed the appeal for lack of standing and mootness.

CONCLUSION:

Therefore, it is the opinion of this Office that ratified Bills R868 and R864 deal with 'those powers, duties and responsibilities' that have been set aside for the counties, and as such are violative of Article VIII, Section 7, of the South Carolina Constitution as laws for a specific county.

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