HENRY MCMASTER
ATTORNEY GENERAL

September 12, 2008

The Honorable James T. Schofield
Member, Florence County Council
City-County Complex
180 North Irby Street MSC-G
Florence, South Carolina 29501

Dear Councilman Schofield:

You indicate that a question "has arisen before the Florence County Council that needs to be addressed by the State Attorney General's Office regarding a legal opinion on moving the criminal court from the City-County Complex in Florence to a site in Effingham, which is not inside the City of Florence ...." As you note, the City of Florence is the county seat of Florence County. By way of background, you also state:

> [a]t its regular meeting of August 21, 2008 Florence County Council was presented three options for a Judicial Center; two were inside the city limits of the City of Florence and one was in Effingham, outside of the city limits. I advised Council at the meeting that my opinion is that moving the courthouse outside of the County Seat, according to Article 7, Section 8 of the Constitution of the State of South Carolina would be a violation of the constitution. I also further believe that moving a portion of the court system would be illegal pursuant to Title 4, Chapter 1, Section; 10 of the South Carolina Code of Laws, which also, in my opinion, requires a referendum in which a two-thirds majority of the voters must vote in favor of moving the courthouse/county seat to another location.
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> I would also call to your attention a Supreme Court Case (Harold C. Morris vs. Mackey Scott, Case # 19423, May 23, 1972), in which there was an order by Judge Ness in which he states in part, "Thus the term courthouse in Section 6 of Act #35 of 1896 is synonymous with county seat."
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> Some individuals seem to have the interpretation that if you move some of the court proceedings, but not all of the court proceedings, this would be acceptable and not a violation of the State Constitution or State Code. According to Black's Law Dictionary, as you know, the term courthouse is defined as "a building occupied for the public session of a court with its various offices. The building occupied and

appropriated according to the law for the holding of court." It would seem to me that the removal and establishment of any building that would be occupied for any session of public court would be considered moving the courthouse from the County Seat.

Law/Analysis

S. C. Code Ann. Section 4-1-20 provides as follows:

> [w]henever the citizens of any county desire to move the courthouse they shall file a petition to that effect stating the point to which the courthouse is proposed to be removed and signed by one third of the qualified electors of such county with the Governor, who shall within twenty days after the filing order an election in such county to be held within sixty days, at which election the electors shall vote for or against the proposed removal. The commissioners of election for such county shall appoint managers of each precinct in the county and furnish them with the necessary boxes and registration books, which the officers of registration may furnish the commissioners. Such election shall be conducted as general elections in this State, and all electors qualified to vote at general elections shall be entitled to vote thereat. The commissioners of election of such county shall receive the returns of the managers, tabulate the vote and declare the result. If two thirds of the qualified voters voting in such election vote in favor of such removal the governing body of the county shall take the necessary steps to remove the courthouse and public records of such county to the place designated.

Moreover, Article VII, Section 8 of the South Carolina Constitution (1895 as amended) further states that

> [n]o County Seat shall be removed except by a vote of two-thirds of the qualified electors of said County voting in an election held for that purpose, but such election shall not be held in any County oftener than once in five years.

In *Morris v. Scott*, 258 S.C. 435, 189 S.E.2d 28 (1972), our Supreme Court commented at some length upon the interrelationship between the foregoing provision of the Constitution, prohibiting removal of the county seat except upon two-thirds vote, and § 4-1-20 which specifies procedure for moving the courthouse. The *Morris* Court observed that:

> [w]hat is now Code Section 14-2 was first enacted as a part of Act No. 35 of 1896 entitled 'AN ACT to Provide for the Formation of New Counties and the Changing of County Lines and County Seats and Consolidation of Counties.' The 1895 Constitution provides a method by which new counties can be established and Act No. 35 of 1896 is the legislative vehicle by which the constitutional authorization can be carried out. Accordingly Act No. 35 of 1896 requires (a) a petition by one-third of the qualified electors within the area of each section of the old county proposed

> to be cut off as prescribed by Article VII, Section 1, of the South Carolina Constitution, and (b) the two-thirds approval by the qualified electors of the proposed area prescribed by Article VII, Section 2.
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> Section 6 of Act No. 35 of 1896 (which has now become Section 14-2) provides a method by which the citizens of any county may bring about a move of the 'Court House' upon a petition and a two-thirds favorable vote in a referendum on the question of moving the courthouse to another location. This statutory authorization is in line with Article VII, Section 8, of the South Carolina Constitution prohibiting the removal of a county seat without a vote by two-thirds of the qualified electors of the county. Section 6 of Act No. 35 of 1896 is apparently the statutory procedure for carrying out the constitutional requirements of Section 8 of Article VII relating to the relocation of the county seat. Any doubt on this point is resolved by reference to the title of Act No. 35 of 1896 which expressly states that one of its purposes is to provide for the changing of 'county seats'; and there is no provision of Act No. 35 of 1896 dealing with the relocation of county seats other than Section 6 dealing with the relocation of a 'Court House.' *Thus the term 'Court House' used in Section 6 of Act No. 35 of 1896 is synonymous with 'county seat'* (Cf. Conek v. Skeen, 109 Va. 6, 63 S.E. 11; Matkin v. Marengo County, 137 Ala. 155, 34 So. 171); and Section 6 does not deal with a relocation of a county courthouse within the same county seat, but only with the relocation of the county seat to another city or town.

(emphasis added). Under South Carolina law, a removal of the courthouse is thus, in essence, a transfer of the county seat. For these to be transferred, a favorable two thirds vote of the county's voters is therefore necessary.

In an opinion dated March 4, 1967, we addressed a situation in which it was proposed that a county courthouse be built approximately one and one quarter miles from its then existing location. We concluded that such move was prohibited except in compliance with § 4-1-20. In our view,

> Section 14-2 [now § 4-1-20] is by its terms mandatory and it is our opinion that it must be followed in *making any substantial* relocation of a county courthouse. In your particular case, it is our view that removal of the courthouse a mile and a quarter from its present location is substantial. It follows then that the statute must be followed, or else it must be repealed or amended to provide a difference [in] procedure.

(emphasis added). Accordingly, we have long been of the opinion that any "substantial" relocation of the courthouse outside the county seat triggers § 4-1-20.

Nevertheless, your letter indicates that some in Florence County "have the interpretation that if you move some of the court proceedings, but not all of the court proceedings, this would be acceptable and not a violation of the State Constitution or State Code." However, we disagree and

believe a court would reject such an argument. In our opinion, we are of the opinion that a court would find that removal of the criminal courts to another location is essentially a transfer of the courthouse.

A courthouse is commonly thought of as "[t]he building occupied and appropriated according to law for the holding of courts." *Black's Law Dictionary* (4th ed.). As one historian has noted, in South Carolina, criminal courts, as well as other courts, traditionally "... met at stated intervals in buildings specially constructed for that purpose ...." Williams, *Vogues in Villany*, 75 U.S.C. Press 1959). To that end, "[t]he construction of an official courthouse was one of the first governmental activities undertaken in any judicial district [in South Carolina]." *Id.* at 166, n. 1. As Dr. Williams also has described,

> [t]he "Courts of General Sessions of the Peace, Oyer and Terminer, Assize and General Gaol Delivery" were held at the "Seats of Justice" in each district of the State for a period of four to ten days every spring and fall. For many people these biannual sessions were the high points of the entire year.

Id. at 13. Thus, historically, in South Carolina, "criminal court" or General Sessions Court has been considered the centerpiece of court activity, and criminal proceedings have always been conducted in the county courthouse, in the county seat. Undoubtedly, this was one of the principal purposes in adopting Art. VII, § 8 and the General Assembly's enactment of § 4-1-20.

A Texas case, *Stine v. State*, 908 S.W.2d 429 (Tex. Cr. App. 1995), is instructive in this regard. In *Stine*, the Court concluded that the State Constitution was violated by convening criminal proceedings in a hospital, away from the county seat. The Texas Constitution required court proceedings to be held at the county seat. Thus, in the view of the Court,

> [i]f court proceedings were allowed to be held wherever the judge or parties thought it necessary, not only would the Texas Constitution be violated, but the general public would be greatly harmed because it would lose the right to a public trial provided by law.

908 S.W.2d at 431. For these same reasons, we conclude that both Art. VII, § 8 of the South Carolina Constitution and § 4-1-20 prohibit moving the county courthouse of Florence County, or in this instance, a substantial part thereof, without a two thirds vote of the people of Florence County.

Conclusion

Art. VII, § 8 of the South Carolina Constitution forbids moving the county seat except upon a two thirds vote of the people of the county. Likewise, pursuant to § 4-1-20, the courthouse cannot be moved outside the county seat except upon two thirds vote. Our Supreme Court has concluded

that the terms "county seat," as used in the Constitution, and "courthouse," as employed in § 4-1-20, are synonymous.

Thus, in our opinion, both the Constitution and statutes prohibit moving the Florence County Courthouse without a referendum and a two thirds vote of the County. This conclusion is not changed by removal only of the criminal courts to Effingham and leaving other courts at the present location. Splitting the Court structure would, in our opinion, just as much trigger these requirements of a referendum as would moving the entire physical courthouse. The term "courthouse" is the place for holding court generally. To remove criminal proceedings would, in our opinion, constitute a substantial removal of both the county seat and courthouse, thereby triggering both Art. VII, § 8 as well as § 4-1-20.

Accordingly, it is our opinion that a court would likely conclude that the establishment of facilities for the purpose of conducting court proceedings outside the City of Florence would constitute a removal of the courthouse, and would be prohibited without the required two thirds vote specified in § 4-1-20 and Art. VII, § 8 of the Constitution..

Very truly yours,

Henry McMaster
Attorney General

By: Robert D. Cook
Deputy Attorney General

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