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The State of South Carolina

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January 19, 1995

The Honorable Lawrence E. Richter, Jr.
Senator, District No. 44
80 Cumberland Street
Charleston, South Carolina 29402

Dear Senator Richter:

You have been requested to sponsor legislation which would specifically authorize the disclosure of otherwise confidential juvenile offender information,[1] which legislation appears to be model legislation specifically tailored for states wherein Home Rule is interpreted to "authorize" or "enable" localities to perform overlapping functions if the State has not pre-empted the field or specifically prohibited such actions (the Dillon Rule). You have inquired as to the current status of the Dillon Rule in South Carolina subsequent to the decision in Williams v. Town of Hilton Head Island, ___ S.C. ___, 429 S.E.2d 802 (1993).

Prior to the advent of home rule in South Carolina, municipalities and counties exercised powers in accordance with Dillon's Rule, which "originated with John F. Dillon, former Chief Justice of the Supreme Court of Iowa and former circuit judge for The United States Eighth Judicial Circuit. See John F. Dillon, Commentaries on the Law of Municipal Corporations, (5th ed.), § 237, p. 448 (1911)." Williams, supra, 429 S.E.2d at 804, fn. 1. The Rule may be summarized as follows:

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[1] Your letter comments that the otherwise confidential information would be shared only between certain entities within the state, i.e., schools, social services agencies, and the juvenile justice system.

Donald Hatt.

> It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others:
>
> First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation, not simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of powers is resolved by the courts against the corporation, and the power is denied.

J. Underwood, The Constitution of South Carolina, Vol. II, p. 5 (1989), quoting from Dillon's Commentaries. Municipalities and counties functioned according to this standard for many years prior to home rule. See, for example, Blake v. Walker, 23 S.C. 517 (1885). Adoption of Article VIII, the home rule amendment, by the General Assembly in 1973 (following a successful referendum in November 1972) brought sweeping changes to local governments.

Within Article VIII, the General Assembly was directed to provide, by general law, for the structure, organization, powers, duties and responsibilities for counties (§ 7) and municipalities (§ 9). In addition, Art. VIII, § 17 provides:

> The provisions of this Constitution and all laws concerning local government shall be liberally construed in their favor. Powers, duties, and responsibilities granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution.

Such grant is not absolute, however. The general powers of a municipal government are outlined in S.C. Code Ann. § 5-7-30 (1993 Cum. Supp.), which provides in relevant part:

> Each municipality of the State, in addition to the powers conferred to its specific form of government, may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of powers in relation to roads, streets, markets, law enforcement, health and order in the municipality or respecting any subject which appears to it necessary and

> proper for the security, general welfare and convenience of the municipality or for preserving health, peace, order, and good government in it, ... [Emphasis added.]

Similarly, as to counties, § 4-9-30 provides in relevant part:

> Under each of the alternate forms of government listed in § 4-9-20, ... each county government within the authority granted by the Constitution and subject to the general law of this State shall have the following enumerated powers which shall be exercised by the respective governing bodies thereof[.] ... [Emphasis added.]

See also § 4-9-25, which broadened the grant of powers to counties.

The issue considered in Williams, supra, was whether the adoption of Article VIII and implementing legislation effectively superseded Dillon's Rule with respect to municipalities; the Supreme Court concluded that

> by enacting the Home Rule Act, S.C. Code Ann. § 5-7-10, et seq. (1976), the legislature intended to abolish the application of Dillon's Rule in South Carolina and restore autonomy to local government. We are persuaded that, taken together, Article VIII and Section 5-7-30, bestow upon municipalities the authority to enact regulations for government services deemed necessary and proper for the security, general welfare and convenience of the municipality or for preserving health, place, order and good government, obviating the requirement for further specific statutory authorization so long as such regulations are not inconsistent with the Constitution and general law of the state.

Williams, 429 S.E.2d at 805.

In Underwood's treatise The Constitution of South Carolina, Volume II is reprinted the exchange by the West Committee members when considering the language and effect of proposed Article VIII; see pages 178-79. The language suggested therein became Art. VIII, § 17, supra, and Underwood observed that the "provision was intended to be a distinct change in the attitude with which constitutional and statutory grants of power were

construed." Underwood, page 179. Therein Underwood also quoted from the report of the West Committee:

> This section is recommended by the Committee as an indication of the intent of this Constitution, since it is impossible to describe all of the conditions which pertain to local government and which may be significant in the future. Consequently, the Committee feels that whenever possible laws should be interpreted in favor of the localities.

Id.

As to municipalities, clearly Dillon's Rule has been abolished by virtue of the Williams decision; the decision did not discuss application of the Rule to county governments, however. The grant of powers, duties, and responsibilities to counties by § 4-9-30 was more specific and was somewhat more limited than the broad grant of authority provided to municipalities by § 5-7-30, though that grant has been broadened by the adoption of § 4-9-25. It could certainly be argued that the legislative intent was to broaden the grant of authority to both counties and municipalities and that doubt as to local powers be resolved in favor of the local governments. While Williams did not address county government vis a vis Dillon's Rule, Williams would certainly be of great precedential value in arguing that Dillon's Rule has been abolished as to county governments.

While Dillon's Rule has been abolished as to municipalities and most probably has been abolished as to counties, on the basis of Williams, the powers and duties of municipalities and counties are not absolute. Sections 5-7-30, 4-9-30, and 4-9-25 make clear that the powers and duties to be exercised by those political subdivisions are subject to the Constitution and general laws of the State of South Carolina. Too, it would be necessary to examine various laws to determine whether the General Assembly has evidenced an intent that further regulation, as to a particular subject, by a political subdivision be precluded.[2] Moreover, in many instances federal laws must also be considered; as two examples, records of alcohol and drug abuse patients and educational records of juveniles are protected by federal laws which most probably cannot be modified by state law. Thus, the status of Dillon's Rule is not the sole consideration herein.

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[2] See, for example, Terpin v. Darlington County Council, 286 S.C. 112, 332 S.E.2d 771 (1985) (state law preempted county's regulation of sale of fireworks).

Enclosed with your letter was a copy of a model bill which, if enacted as presented to this Office, would permit any county or municipality to establish a Serious or Habitual Offender Comprehensive Action Program, a multi-disciplinary interagency case management and information sharing system relative to serious or habitual juvenile offenders. In section D of the model legislation, it appears that the legislation, if adopted, would preempt state laws as to juvenile mental health records and the like. We would recommend careful study of not only the relevant state but also federal laws so that the preemption issue could be fully evaluated.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

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