



Reg. 5017

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

August 7, 1995

The Honorable Greg Delleney, Jr.
Member, House of Representatives
Post Office Box 808
Chester, South Carolina 29706

RE: Informal Opinion

Dear Representative Delleney:

By your letter of July 19, 1995, to Attorney General Condon, you have sought an opinion as to whether Chester County Council may repeal Act No. 190 of 1945, relative to the Forfeited Land Commission of Chester County, so that Chester County may be governed by S.C. Code Ann. §12-59-10 et seq. concerning forfeited land commissions generally.

A review of Act No. 190 of 1945 shows that it is an act pertaining specifically and solely to the Forfeited Land Commission in Chester County, particularly as to the disposition of funds in the hands of the Commission and to further provide for the disposition of lands in the hands of the Commission and the method of sale of such lands. Clearly this is an act local in nature, amending §2850-4 of the 1942 Code of Laws, a Code section pertaining only to Chester County. Chester County Council would repeal or abolish this Act and as a result would be governed by the general law pertaining to forfeited land commissions, S.C. Code Ann. §12-59-10 et seq. (1976).

Relevant to your inquiry is an uncodified portion of Section 3 of Act No. 283 of 1975, the Home Rule Act, which provides in part:

All operations, agencies and offices of county government, appropriations and laws related thereto in effect on the date the change in form becomes effective shall remain in full force and effect until otherwise

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implemented by ordinance of the council pursuant to this act. Provided, however, that county councils shall not enact ordinances in conflict with existing law relating to their respective counties and all such laws shall remain in full force and effect until repealed by the General Assembly, or until January 1, 1980, whichever time is sooner

I have not located an act of the General Assembly repealing Act No. 190 of 1945. Therefore, unless and until Chester County Council should take some action respecting this local law, it would remain in force and effect. As of January 1, 1980, Chester County Council would have the authority to adopt an ordinance in conflict with this Act since it relates solely to operations of only Chester County.

In this regard, the Supreme Court's decision in Graham v. Creel, 289 S.C. 165, 345 S.E.2d 717 (1986), is particularly helpful. Horry County had a special law establishing the Horry County Police Commission in effect when its form of home rule government was adopted. After January 1, 1980, Horry County Council modified the act of the General Assembly and abolished the Police Commission. An argument was made that the local legislation lapsed as of January 1, 1980, but the court decided that point negatively, stating that the local law remained in effect until Horry County enacted an ordinance abolishing the Police Commission and repealing the act of the General Assembly. The situation is similar to the issue you have raised, in that the Supreme Court concluded that after January 1, 1980, Horry County Council had the authorization to modify the local law in question by way of an ordinance.

Because Act No. 190 of 1945 is an act affecting operations of Chester County alone, as well as the express language of Section 3 of the Home Rule Act as interpreted in Graham v. Creel, supra, I am of the opinion that Chester County Council would have the necessary authority to modify, by ordinance, the provisions of Act No. 190 of 1945 and to follow general statutory law as to forfeited land commissions.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion. I trust that the foregoing has satisfactorily responded to your inquiry and that you will advise if clarification or additional assistance should be necessary.

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With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General