



STATE of SOUTH CAROLINA

CHARLES MOLONY CONDON
ATTORNEY GENERAL

Office of the Attorney General
Columbia 29211

April 18, 1996

The Honorable George H. Bailey
Member, House of Representatives
308-C Blatt Building
Columbia, South Carolina 29211

Dear Representative Bailey:

You have advised that the Dorchester County Council has voted not to fund an office for the Legislative Delegation in Dorchester County. You have stated your feeling that a section of the Home Rule Act explicitly states, "county council shall provide office space and appropriations for the operation of the county legislative delegation" and that the delegation would submit a budget. You have sought my opinion as to whether Dorchester County Council is required by law to provide office space for the Legislative Delegation.

The provision of the Home Rule Act to which you are referring is found in section 3 of Act No. 283 of 1975, which section provides in relevant part:

Under all forms of county government except the board of commissioners form, county councils shall provide office space and appropriations for the operation of the county legislative delegation office including compensation for staff personnel and necessary office supplies and equipment. The amount of such appropriations shall be determined by the legislative delegation and included in the annual county budget by the council. The delegation shall be responsible for the employment, supervision and discharge of all personnel employed in the delegation office. [Emphasis added.]

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This provision of the Home Rule Act has been the subject of numerous opinions of the Office of the Attorney General, among them opinions dated December 29, 1976; September 9, 1977; May 18, 1978; September 18, 1979; July 16, 1980; July 7, 1981; August 17, 1981; April 15, 1983; October 18, 1983; and December 22, 1988. Copies of these opinions are enclosed for your review. These opinions have consistently interpreted section 3 of the Home Rule Act to mean that a county council would be required to furnish office space and appropriations for the operation of an office for the county legislative delegation. The delegation itself would be responsible for determining the amount of appropriated funds which would be necessary to fund the office, and county council would then be required to provide that amount.

That the above-quoted portion of the Home Rule Act was not codified in the 1976 Code of Laws¹ was discussed in the opinion of December 22, 1988. Therein, it was stated:

In spite of the fact that the relevant portion of section 3 of Act No. 283 of 1975 was omitted from the 1976 Code of Laws, this Office has continued to suggest that the enactment be followed, as indicated by the five referenced opinions, the oldest of which was issued several years after the adoption of the Home Rule Act. It is also worthy of mention that another uncodified portion of section 3 of Act No. 283 has been discussed and applied as late as 1986 in Graham v. Creel, 289 S.C. 165, 345 S.E.2d 717 (1986), ...

Thus, it appears appropriate that section 3 of Act No. 283 of 1975 continue to be followed, in spite of its failure to be codified in the 1976 Code of Laws.

It is observed that since the 1988 opinion was rendered by the Office of the Attorney General, no legislative changes have been forthcoming. It is well recognized that the absence of any legislative amendment following the issuance of an opinion of the Attorney General strongly suggests that the views expressed therein were consistent with legislative intent. Scheff v. Township of Maple Shade, 149 N.J.Super. 448, 374 A.2d 43 (1977); Op. Att'y Gen. No. 84-69. Indeed, the General Assembly has on occasion acted swiftly in amending statutes following the issuance of an opinion by this Office; but such amendment has not been forthcoming in this instance.

¹Section 3 of Act No. 283 of 1975 was codified as §14-3717 in the 1975 Cumulative Supplement to the 1962 Code of Laws.

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It is further observed that in the volume of the Code of Laws titled "Statutory Tables," no reference is made to the repeal, by implication or otherwise, of section 3 of Act No. 283 which, as noted earlier, was once codified as §14-3717 of the 1962 Code of Laws. Arguably, the Code Commissioner has therefore not considered this section to have been repealed.² I have been unable to locate a legislative act expressly repealing the section. Furthermore, repeal by implication is not favored. State v. Thrift, 312 S.C. 282, 440 S.E.2d 341 (1994). It is my understanding that county councils have continued to follow this uncodified provision, in various ways, since the inception of the Home Rule Act. Thus, the provision has not been treated as repealed, due to its lack of codification, by the State or its political subdivisions.

CONCLUSION

Based on the foregoing, it is too late in the day to argue that the county does not have an obligation to provide office space and appropriations for the operation of the county legislative delegation office. With Home Rule came that obligation. Absent an express repeal of Section 3 of the Home Rule Act, and I find none, it cannot be said that a repeal may be implied through a failure to insert this provision in the Code. Accordingly, this Home Rule requirement remains on the books.

Moreover, earlier opinions of this Office conclude that the Home Rule Act "contemplates the establishment and maintenance by each county of one legislative delegation office and does not ... authorize the payment of expenses for conducting delegation business to individual delegation members who maintain private business

²In instances in which the Code Commissioner has made a notation that a statute has been repealed by implication, such notation is not always dispositive. Justice Toal, in State v. Thrift, supra, opined in footnote 16:

We are mindful that the South Carolina Code Annotated contains a notation in the 1992 supplement that Secs. 8-13-410 through 8-13-500 are repealed by 1991 Act No. 248, Sec. 3. The 1991 Act No. 248 contains no such express repealer. We take judicial notice that it is the current practice of the Code Commissioner to place this type of repealer language in the Code; however, we hold today that this notation is not dispositive. ...

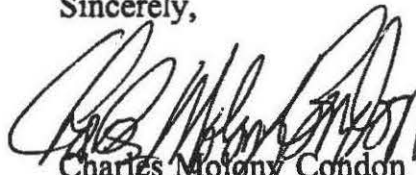
That there is no notation from the Code Commissioner as to repeal in this instance, the argument is even stronger that section 3 of the Home Rule Act cited above has not been repealed and is still valid and effectual.

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offices of whatever nature." Op. Att'y Gen. September 18, 1979 (Karen LeCraft Henderson). Those earlier opinions are hereby reaffirmed today. It is, therefore, my opinion that the county is obligated to provide the delegation with an office and with the appropriation deemed necessary by the delegation to operate the office, and not its members with a personal subsidy.

With kindest regards, I am

Sincerely,



Charles Molony Condon
Attorney General

Enclosures

cc: Each County Administrator and Supervisor
Each County Legislative Delegation Chairperson