

The State of South Carolina



Office of the Attorney General

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Dear Mr. Nauful:

By your letter of May 28, 1986, you have referenced an act of the General Assembly adopted prior to the advent of Home Rule with regard to the Lexington County Hospital, a political subdivision of Lexington County. You have asked for the opinion of this Office as to the status of this local legislation, in light of adoption of the Home Rule Act (Act No. 283, 1975 Acts and Joint Resolutions) and several ordinances pertaining to the Hospital adopted by Lexington County Council following the Home Rule Act. In particular, you wish to know whether the Board of Trustees must still carry out the requisition of Act No. 515 of 1971 and, if so, whether the required approval would come from the Lexington County Council or Lexington County Legislative Delegation.

Prior to responding to your inquiry, it is necessary to review the relevant legislation and determine the status of Act No. 515. Act No. 515 of the General Assembly, effective upon approval by the Governor on June 25, 1971, amends Section 1 of Act 1122 of 1970, to provide in Section 1(a):

On or before the occasion in each calendar year when the annual tax levy for Lexington County is fixed by the auditor of Lexington County (the auditor), the auditor shall levy, upon all taxable property in the county, and the treasurer of Lexington County (the treasurer) shall collect, a tax of such number of mills as the board of

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trustees of Lexington County Hospital (the board), by resolution duly adopted, shall requisition, with the approval of a majority of the Lexington County Legislative Delegation. ...

This provision as adopted in 1971 has apparently not been amended or repealed by a subsequent act of the General Assembly.

In 1975, the Home Rule Act, No. 283, was adopted. A portion of Section 3 of that act provides as follows:

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 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with existing law relating to their respective counties and all such laws shall remain in full force and effect until repealed by the General Assembly, or until January 1, 1980, whichever time is sooner... .

Acting pursuant to this portion of the Home Rule Act, Lexington County Council has adopted three ordinances relative to appointment of trustees of the Lexington County Hospital.

Of the three ordinances, only that one adopted on February 27, 1980, has any relevance herein. Section 6 of that ordinance provides:

This Ordinance amends portions of certain laws relating to the composition of the Lexington County Hospital Board of Trustees and the method of appointment of members thereto. It does not and shall not be deemed to change, alter, or amend any of the existing statutory powers, duties, functions or obligations of the Lexington County Hospital Board of Trustees. All laws relating to the Lexington County Hospital Board of Trustees specifically including Act 792 of the Acts and Joint Resolutions of the General Assembly of 1967, as amended, shall

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remain in full force and unaltered hereby
except and to the extent that such laws
conflict with the provisions of this
Ordinance.

Thus, by this ordinance, Lexington County Council appears to have ratified the acts of the General Assembly relative to the Lexington County Hospital, except as to composition and appointment of the Board of Trustees. It must be assumed that Act No. 515 of 1971 was thereby ratified by Council, as well.

Because Section 1(a) of Act No. 515 of 1971 has not been repealed by the General Assembly or otherwise modified by ordinance of Lexington County Council, that statute remains in full force and effect. A recent decision of the South Carolina Supreme Court supports that conclusion. In Graham v. Creel, Op.No. 22582, filed June 23, 1986, the respondent argued unsuccessfully that certain local legislation for Horry County adopted prior to Home Rule expired on January 1, 1980, construing the proviso contained in Section 3 of Act No. 283 of 1975, supra; he further claimed that due to the expiration on January 1, 1980, duties formerly assigned to the Horry County Police Commission devolved automatically upon the sheriff as the county's chief law enforcement officer and that further actions (or inactivity) of Horry County Council were in violation of the Home Rule Act and null.

The Supreme Court noted that the local law was never repealed by the General Assembly and that after January 1, 1980, Horry County Council was empowered to adopt an ordinance in conflict with the local legislation. As of January 1, 1980, three options were available to Council with respect to the Police Commission:

1. let it continue as it was being operated when Home Rule became effective in Horry County;
2. abolish the Horry County Police Department and devolve its powers and functions on the sheriff, following provisions of Section 4-9-30(5) of the Code; or
3. otherwise provide by ordinance under Home Rule.

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The Court further provided:

The Home Rule Act, while preventing the General Assembly from enacting "special legislation" and voiding any "special legislation" which contradicts the general law, does not operate retroactively to abolish all "special legislation" which was in effect in South Carolina prior to the enactment of the Home Rule Act.

Since [the local act for Horry County] was not in conflict with the general law, it remained in full force and effect until the Horry County Council enacted Ordinance 5-81 on April 16, 1981. ...

Applying the reasoning of this decision, unless or until Lexington County Council adopts an ordinance in conflict with Act No. 515, that act remains in force and effect.

On this basis, it appears that the Board of Trustees of Lexington County Hospital is still required to requisition whatever millage is necessary to operate and maintain the Hospital.

Act No. 515 also requires that the millage be approved by a majority of the Lexington County Legislative Delegation. You have asked whether, by virtue of Home Rule, this approval authority may have passed to Lexington county Council. Prior to Home Rule, it should be noted that a county's legislative delegation was elected by the voters of an entire county and were thus answerable to the electorate of a county. The county delegation also was responsible for many tasks which had not yet been delegated to counties' governing bodies by the General Assembly. Duncan v. York County, 267 S.C. 327, 228 S.E.2d 92 (1976). Presently, many former responsibilities of a delegation are now left to a county council; whether the approval authority of the Delegation as to the Hospital's millage may have passed to Council is the issue at hand.

As noted, Lexington County Council has apparently not acted specifically with respect to Lexington County Hospital in changing approval authority to Council, though such would be within the powers of Council under Home Rule, if that body so desires to act. We have not been advised of any other ordinance of Council which might affect this approval authority. There appears to be no state statute which would conflict with

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Act No. 515 or otherwise remove approval authority from the Delegation, nor is there a statute which would be in effect self-executing, to automatically transfer that authority. Thus, until or unless Lexington County Council adopts a contrary procedure, approval authority would remain with the Delegation.

There is a potential constitutional problem with Act No. 515, Section 1(a), in providing that the Delegation approve the requisition of the Hospital Board. Of course, constitutionality of an act of the General Assembly is presumed, and courts will not find an act unconstitutional unless its unconstitutionality appears clear, beyond any reasonable doubt. Thomas v. Macklen, 186 S.C. 290, 195 S.E. 539 (1937); Townsend v. Richland County, 190 S.C. 270, 2 S.E.2d 777 (1939). In Gunter v. Blanton, 259 S.C. 436, 192 S.E.2d 473 (1972), our Supreme Court found that a requirement that the Cherokee County Legislative Delegation approve an increase in the tax levy for School District No. 1 of Cherokee County was a violation of the separation of powers doctrine of Article I, § 8 of our State Constitution. While acknowledging that the legislature could impose taxes and further impose a ceiling on such taxes, such was not the effect of the law for Cherokee County. The Court stated:

Under Act No. 685, the Board of Trustees was granted the general power to levy taxes for school purpose in the district. After conferring this power on the Board, the Legislature passed Act No. 542 which attempted to amend the previous Act by granting to the Cherokee County Legislative Delegation the authority to approve or disapprove any tax increase adopted by the Board. This in effect, constituted the County Legislative Delegation a committee of the Legislature to determine not only when a tax increase was proper but also to take such action with regard to the increase as that committee might deem proper.

That the determination of the amount of the tax levy in the school district may be a legislative function delegable to the corporate authorities of the School District under Article X, Section 5 of the Constitution is beside the point. The Act does not and can not authorize the members of the delegation

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to participate in this determination as legislators, for they may exercise legislative power only as members of the General Assembly.

To authorize them to participate as corporate authorities of the school district, as the Act attempts to do, clearly assigns to them a dual role in violation of the separation of powers clause of the Constitution.

259 S.C. at 441. A similar conclusion was reached in Aiken County Board of Education v. Knotts, 274 S.C. 144, 262 S.E.2d 14 (1980). Section 1(a) of Act No. 515 could be found unconstitutional on the basis of these cases; unless or until such a constitutional challenge is successfully brought, however, the act could continue to be followed unless Lexington County Council desires to change it.

In conclusion, it is the opinion of this Office that the provisions of Act No. 515 are still effective, that the Board of Trustees of Lexington County Hospital must still requisition the millage necessary for operation and maintenance of the Hospital, and that a majority of the Lexington County Legislative Delegation must approve the millage requisition.


Sincerely,

Patricia D. Petway

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Assistant Attorney General

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REVIEWED AND APPROVED BY:



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