The State of South Carolina

Office of the Attorney General

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July 15, 1987

The Honorable Joyce C. Hearn
Member, House of Representatives
1300 Berkeley Road
Columbia, South Carolina 29205

Dear Representative Hearn:

By your letter of July 7, 1987, you have asked for the opinion of this Office as to the responsibility for drawing single-member district lines if a county so chooses to set up that type of voting pattern. You are particularly inquiring about Richland County, which by resolution of the Richland County Council dated October 5, 1977 following a referendum and action by the General Assembly, presently utilizes an at-large method of election for council members. For the reasons following, it is the opinion of this Office that Richland County Council would have responsibility to draw the district lines if the county desires to select its council members from single-member districts.

Section 4-9-10(c) of the Code of Laws of South Carolina (1976, as revised) provides the mechanism by which the method of election of county council members may be changed. Because the present method of election has not been declared illegal or not in compliance with state or federal law by a court of competent jurisdiction, the right reserved to the General Assembly in such instances to "prescribe the form of government, the method of election, and the number of terms of council members" in Section 4-9-10(c), would not be applicable here.

Further, as noted above, referenda were held in Richland County on December 2, 1975 and December 16, 1975 (runoff), and the General Assembly adopted Act No. 881 in 1976 to adopt the council-administrator form of government for Richland County and to determine that council members would be elected from the county at large. The period of orderly transition to local

governmental control of local affairs was thus implemented. Any further interference by the General Assembly absent a judicial determination that the present method of election is illegal or in conflict with some provision of state or federal law would appear to violate Article VIII, Section 7 of the State Constitution, which prohibits the adoption by the General Assembly of an act for a specific county. Duncan v. County of York, 267 S.C. 327, 228 S.E.2d 92 (1976); Horry County v. Cooke, 275 S.C. 19, 267 S.E.2d 82 (1980); Van Fore v. Cooke, 273 S.C. 136, 255 S.E.2d 339 (1979). As stated in Van Fore v. Cooke, supra,

> the general law permits the general assembly to act to a very limited extent by special law in the establishment of each initial county government. See Code §§ 4-9-10(a) and 4-9-90 (1976). It does not, however, allow the general assembly to repeatedly inject its will into the operation of county government. [Emphasis added.]

Id., 273 S.C. at 139. Because the General Assembly has already had its "one shot" with respect to Richland County, see Duncan v. County of York, supra, further involvement by that entity would not be constitutionally permissible.

Section 4-9-90 of the Code requires that county council members be elected from single-member districts unless another election method has been properly selected, as was done by Richland County. That section requires further that "[a]ll districts shall be reapportioned as to population by the county council within a reasonable time prior to the next scheduled general election which follows the adoption by the State of each federal decennial census" for counties electing council members from single-member districts. Amendment as to the entity responsible for redefining the districts following adoption of the census, i.e., reposing the responsibility in the county council, was made by Act No. 313 of 1982. Interestingly, this amendment was adopted following the court's admonition in Van Fore v. Cooke, supra, that the General Assembly could not continue to "inject its will into the operation of county government." Thus, reapportioning or redrawing district lines is definitely the responsibility of the county council and is supportive of the principle that after its initial involvement, the General Assembly would leave control of county government to the county itself.

Because the initial form of government has been in place for nearly a decade and the General Assembly has completed its initial actions to establish the initial form of government, and further because such a change to single-member districts would not be the result of having the present form of government or method of election judicially determined to be illegal or violative of state or federal laws, it would be the responsibility of Richland County Council to determine boundary lines for single-member districts if a change to that method of election is made. 1/

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions

cc: William F. Able, Esquire
Richland County Attorney

1/ Such a change would, of course, require approval by the United States Department of Justice, under the Voting Rights Act of 1965, as amended, prior to implementation.