The State of South Carolina

Office of the Attorney General

Opinion No 85-56 p163

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June 6, 1985

Ms. Helen T. Zeigler, Special Assistant
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Office of the Governor
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Dear Ms. Zeigler:

You have asked for the opinion of this Office as to the constitutionality of H.2949, R-215, which act provides a system of county government for Edgefield County, single member districts, terms of council members, and so forth. For the reasons following, it is the opinion of this Office that the act is most probably constitutional.

We would note that the system of county government originally enacted for Edgefield County was, in effect, thrown out as a result of litigation culminating in a decision by the United States Supreme Court in McCain v. Lybrand, ___ U.S. ___, 104 S.Ct. ___, 79 L.Ed.2d 271 (1984). An interim plan of county government was approved by court order dated July 11, 1984, and has been operative since then. The act under consideration adopts the basic plan as approved by the court order.

Section 4-9-10(c), Code of Laws of South Carolina (1984 Cum.Supp.), provides in part:

> If the governing body of the county as initially or subsequently established pursuant to a referendum or otherwise shall be declared to be illegal and not in compliance with state and federal law by a court of competent jurisdiction, the General Assembly shall have the right to prescribe the form of government, the method of

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> election, and the number and terms of council members but may submit to the qualified electors by referendum a question as to their wishes with respect to any element thereof which question shall include as an option the method of election in effect at the time of the referendum.

Because a court of competent jurisdiction has found previous legislation relative to the governing body of Edgefield County not to be in compliance with federal law, this statute is applicable; thus, action by the General Assembly was appropriate.

The argument that such legislation may be void as violative of Article VIII, Section 7 of the State Constitution, which prohibits the enactment of a law for a particular county, was rejected in Horry County v. Cooke, 275 S.C. 19, 267 S.E.2d 82 (1980). In applying the portion of Section 4-9-10(c) cited above to legislation to establish a system of government for Horry County, the Supreme Court stated:

> This provision is to be liberally construed and is presumed constitutional if reasonably possible. ... Given the case law espoused in Duncan v. York County ... and Van Fore v. Cook, the only reasonable interpretation to be given this section is that it addresses only the situation where the transition is being made to the initial county government. Thus the language "or subsequently" in the act refers not to county governments established subsequent to the initial one but rather to attempts to set up the initial government. ... The language "or subsequently merely recognizes the possibility, as typified by Horry County's experience, that more than one attempt might be necessary to complete the transition to home rule.

275 S.C. at 24-25, 267 S.E.2d at 84-85. In a situation similar to that experienced in Horry County, Edgefield County has not yet completed "the transition to home rule." Thus, an act by the General Assembly is appropriate and necessary in this instance, and most probably no constitutional violation would be found, applying the court's reasoning in Horry County v. Cooke, supra.

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While it is within the exclusive province of the courts of this State to determine the constitutionality of a statute, it is the opinion of this Office that a court deciding the issue would most probably uphold the constitutionality of H.2949, R-215.

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP:djg

REVIEWED AND APPROVED BY:

Robert D. Cook

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