

1984 WL 249846 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 26, 1984

***1** Honorable Heyward McDonald

Senator

Senatorial District No. 7

Gressette Senate Office Building, Suite 604

Columbia, South Carolina 29202

Dear Senator McDonald:

You have asked the opinion of this Office whether Senate Bill S-696 is constitutional. As you mentioned in your requesting letter, this Office has previously rendered three opinions in which it was concluded that an enactment by the General Assembly which would provide a method for the allotment of electrical services in an area newly annexed by a municipality without the consent of the governing body of the municipality would most probably violate the provisions of Article VIII, § 15 of the South Carolina Constitution, 1895 as amended.¹ In addition, this Office reviewed a prior draft of S-696 and concluded by informal opinion dated January 13, 1984, that 'since the proposed bill negates the constitutional requirement of prior consent by municipality in several respects it is most probably violative of Article VIII, § 15 of the South Carolina Constitution, 1895 (as amended).'² Thus, we treat your current inquiry as a request to review this prior opinion.

S-696 would essentially allow electrical cooperatives and private power companies to continue operation in geographical areas previously assigned to them by the Public Service Commission even after the geographical areas are annexed by a municipality or become incorporated as a municipality without consent of the governing body of the municipality. We have reviewed our prior opinion in that an additional argument in favor of the constitutionality of S-696 has been advanced which raises issues not previously addressed by this Office in its prior opinions relating to the operation of electrical utilities in newly annexed areas of municipalities.³ While this argument is certainly not without appeal, and we suggest that the issue should be ultimately determined by a court, this Office adheres to its prior opinion that S-696 most probably violates the provisions of [Article VIII, § 15 of the South Carolina Constitution](#).

The legal foundation for the argument favoring a finding that S-696 is constitutional is that pursuant to the avenue of [Article VIII, § 14\(6\)](#), [Article IX, § 1](#) supersedes [Article VIII, § 15](#) with respect to the regulation of utilities.⁴ This argument is premised upon the reasoning in [Douglas, et al. v. Ex rel. McLeod, Attorney General](#), 277 S.C. 76, 282 S.E.2d 604 (1981) and [Kramer v. County Council for Dorchester County](#), 277 S.C. 71, 282 S.E.2d 850 (1981). In [Douglas, supra](#), the South Carolina Supreme Court concluded that a statute granting counties the power to fix the salaries of magistrates was unconstitutional. One of the basis for the Court's reasoning was that the statute delegated matters of state-wide concern to local governing bodies and thus violated [Article VIII, § 14](#) and in that connection the Court stated:

The people of this State also adopted an amended [Article VIII](#) concerning local government. [Section 14](#) of this Article provides that, in the enactment of provisions authorized thereunder, the general law provisions applicable to certain matters shall not be set aside. Among those enumerated are the following:

***2** (4) the structure for an administration of the State's judicial system;

(6) the structure and the administration of any governmental service or function, responsibility for which rests with the State government or which requires statewide uniformity.

It is urged that legislative provisions enacted pursuant to [Article IX, § 1](#) are general law provisions concerning a governmental function excluded from the constraints of [Article VIII](#), by the avenue of [Article VIII, § 14\(6\)](#). Thus, it is argued that the provisions of [Article VIII, § 15](#) are inapplicable to the proposed legislation.

We believe the pertinent question presented here is whether or not a specific constitutional provision [i.e., [Article VIII, § 15](#)] is rendered inoperative pursuant to [Article VIII, § 14\(6\)](#) where there exists another related constitutional provision [such as [Article IX, § 1](#)]. General rules of constitutional construction provide that the effect of a particular constitutional provision should be determined in light of its relationship to the entire constitution and not as a single isolated provision. [Johnson v. Piedmont Municipal Power Agency](#), 277 S.C. 345, 287 S.E.2d 476 (1982). Additionally, all sections of the constitution should be considered together and applied in harmony and not in conflict, [Knight v. Hollings](#), 242 S.C. 1, 129 S.E.2d 746 (1963), and in that sense, courts should examine all provisions pertaining to similar subject matter within the constitution. [State v. Rector](#), 158 S.C. 212, 155 S.E. 385 (1930). Finally, it is the duty of the court to synchronize provisions of the constitution to avoid nullifying portions thereof. [Ruggles v. Padgett](#), 240 S.C. 494, 126 S.E.2d 553 (1962).

[Knight v. Salisbury](#), 262 S.C. 565, 206 S.E.2d 875 (1974) is the controlling authority with regard to construction of [Article VIII](#), in a similar situation. In [Knight](#), the Court analyzed Article VIII of the constitution and its relation to other constitutional provisions.

The State Constitution, which until March 7, 1973, did not deny the plenary powers of the General Assembly in this area [establishing a special purpose district], has now been changed. Those plenary powers are now curtailed by the prohibition of special laws for a specific county. It is true that Article X (which relates to taxation) has not yet been rewritten, but it must be harmonized with Article VIII which is the latest expression of the electorate as to its will for constitutional provisions on this subject. This is not only true of Article X, but it is true of any other provision in the Constitution. [Emphasis added.]

Id., at 574.

If the position urged were adopted by this Office, [Article VIII, § 15](#), insofar as it relates to utilities would be a nullity. The better reasoned [and required] approach would give consideration and meaning to both [Article IX, § 1](#) and [Article VIII, § 15](#). While [Article IX, § 1](#) appears to give the General Assembly plenary power in the area of utility regulation, this provision, as reasoned in [Knight, supra](#), must be deemed limited by the specific grant of authority to municipalities in [Article VIII, § 15](#) (as well as [Article VIII, §§ 16 and 18](#) which likewise pertain to utilities). Moreover, and importantly, as is recognized in [Knight v. Salisbury, supra](#), [Article VIII, § 15](#) was last amended in 1973 and thus, is the latter and more specific expression of public will with regard to control of utilities operating within a municipality. [[Article IX, § 1](#) was last amended in 1971.]

*3 How a subject has been traditionally perceived is likewise significant in determining whether a particular subject is within the ambit of [Article VIII](#), or excluded pursuant to [Article VIII, § 14\(6\)](#). Cf. [Douglas v. McLeod, supra](#). The General Assembly, and the public, have long recognized that a municipality's control over its public streets and property is a subject area clearly local in nature and subject to local control, as evinced by [Article VIII, § 15](#) and its predecessor provisions. In addition, historically as well, the General Assembly has recognized and preserved the requirement of consent of a municipality to the operation of electrical providers in newly annexed areas of the municipality. See §§ 33-49-250, 58-27-1360, and 58-27-670, CODE OF LAWS OF SOUTH CAROLINA, 1976; also, Op. Att'y. Gen'l., October 17, 1980, James M. Holly, Assistant Attorney General; see, [Article VIII, §§ 16 and 18](#).

We note as well that [Article VIII, § 17](#) requires that 'the provisions of this Constitution and all laws concerning local government shall be liberally construed in their favor.' The conclusion reached herein is consistent with this mandate.

In conclusion, we have found no authority that suggests that [Article VIII, § 14](#) renders inapplicable provisions of [Article VIII](#) where those provisions are otherwise specifically controlling. Therefore, [Article IX, § 1](#) must be construed as being limited by [Article VIII, § 15](#) with regard to the authority of municipalities over utilities operating within municipal borders. Accordingly,

it remains the opinion of this Office that provisions of S-696 which negate the consent of a municipality most probably violate [Article VIII, § 15 of the South Carolina Constitution](#). As heretofore noted, however, this question is not free from doubt and would perhaps best be resolved by a court.

Very truly yours,

Edwin E. Evans
Senior Assistant Attorney General

Footnotes

- 1 The last of this trilogy of opinions, dated October 17, 1980, qualifies the conclusion reached in the prior two with the recognition of contrary authority and that doubt exists as to whether the consent requirements of [Article VIII, § 15](#) apply to utilities already operating with existing facilities in newly annexed areas prior to their annexation.
- 2 Op. Att'y. Gen'l. 1/13/84, Edwin E. Evans, Senior Assistant Attorney General.
- 3 This Office requested and received legal memoranda from the Municipal Association of South Carolina and the South Carolina Electric Cooperative Association, Inc.
- 4 [Article IX, § 1](#) provides:
The General Assembly shall provide for appropriate regulation of common carriers, publicly owned utilities, and privately owned utilities serving the public as and to the extent required by the public interest.
[Article VIII, § 14](#) states, in pertinent part, that:
In enacting provisions required or authorized by this Article, general law provisions applicable to the following matters shall not be set aside: . . . (6) the structure and the administration of any governmental service or function, responsibility for which rests with the State government or which requires statewide uniformity.

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