1984 WL 249921 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
July 3, 1984

***1** Senator Phil P. Leventis
Gressette Building
P. O. Box 142
Columbia, South Carolina 29202

Dear Senator Leventis:
You have requested an informal opinion as to the constitutionality of a proposed bill to draw single member districts for Sumter County. Specifically, you have raised the following questions:
Would this provision be constitutional with regard to local legislation passed by the General Assembly?

Yes. I assume you are referring here to the Constitutional prohibition to local legislation found in Article III, Section 34 of the State Constitution. This issue was specifically dealt with in the case of Horry County v. Cooke, 267 S.E. 2d 82 (1980). As Sumter County's initial method of election adopted under home rule has never been implemented, the Cooke case would stand for the proposition that there would be no constitutional prohibition to the General Assembly now providing for an initial effective method of election to be provided.
Is this method of changing the form of county government permitted under the Home Rule Act? That is, does the Home Rule Act provide for the General Assembly to change the form of government of a political subdivision, in this case, Sumter County?

Yes. South Carolina Code of Laws, 1976, as amended, Section 4-9-10 was amended to provide for just such a situation. The statute provides in pertinent part that
[i]f the governing body of the county as initially or subsequently established . . . 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 election . . .

A very brief history of Sumter County litigation follows:

The Justice Department objected to the at large method of election of the county council. The county requested reconsideration of the objection and the Attorney General declined to withdraw the objection. Suits were then brought by the U. S. Government and by private parties to prevent at large elections being held for county council.

The county held a referendum on the question of whether or not the people preferred at large or single member elections, and at large carried. This referendum result was submitted to the Justice Department. The Justice Department treated this submission as a request for reconsideration. Sumter County viewed it as a new submission which was not timely objected to within sixty days. A three-judge court agreed with the county in the case of Blanding v. Dubose, 509 F. Supp. 1334 (D.S.C. 1981) and authorized at large elections to proceed. On appeal, the United States Supreme Court reversed that decision. Blanding v. Dubose, 70 L.Ed. 2d 576 (1982).

Following that decision, the county instituted a suit in Washington, D.C. before a three-judge court seeking to pre-clear the at large method of election. This court recently issued an Order objecting to the at large method of election.

***2** In light of the United States Supreme Court decision and the recent three-judge court decision, there has been a ruling from a 'court of competent jurisdiction' that the provision is not in compliance and, therefore, the provisions of § 4-9-10 may be implemented.
If this bill were passed, what would be the implication regarding the present litigation between Sumter County Council and the Public Awareness Association of Sumter County?

We are not parties to this suit, nor has our Office seen the pleadings but based on information received regarding this suit which is set out above, it should moot this litigation.
Do the provisions of the Bill, which specify the initial staggering to terms, discriminate against those people living in the districts specified for two year initial terms?

No. Staggered terms are often provided for; however, this Act specifies the districts that will automatically have four year and two year terms. Section 4-9-90 provided the procedure for establishing staggered terms in the initial election under Home Rule as follows:
[i]n those counties where the members are elected for four year terms, such terms shall be staggered. If necessary, in the initial election for members one-half plus one of the members elected who receive the highest number of votes shall serve terms of four years and the remaining members elected shall initially serve terms of two years only.

See also § 4-9-90, as amended, as to a county subsequently adopting staggered terms.

Therefore, this one provision of the bill could be deemed special legislation where a general law can be and is applicable. Of course, any such determination would have to be made by a court of competent jurisdiction and would have to overcome the strong presumption of constitutionality that attaches to any enactment of the General Assembly. University of South Carolina v. Mehlman, 245 S.C. 180, 139 S.E. 2d 771 (1964).

Additionally, of course, this plan would have to be submitted to the Justice Department and receive preclearance before it could be implemented. 42 U.S.C. 1973(c).
Sincerely,

Treva G. Ashworth
Senior Assistant Attorney General

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