

1981 S.C. Op. Atty. Gen. 86 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-58, 1981 WL 96584

Office of the Attorney General

State of South Carolina

Opinion No. 81-58

June 18, 1981

***1 SUBJECT: Annexation; Boundaries; Counties; Municipal Corporations**

(1) The constitutional provision by the General Assembly for a referendum on consolidation of counties with municipalities and other political subdivisions (Article VIII, Section 12) is not self-executing (16 Am.Jur.2d Constitutional Law, § 140).

(2) A county council would not be bound to honor a petition containing the requisite number of signatures and calling for a referendum on consolidation (§ 5-3-30, Code of Laws, 1976, as amended).

TO: The Honorable John Drummond
Senator
Greenwood and McCormick Counties

DISCUSSION:

You have raised several questions regarding [Article VIII, Section 12 of the South Carolina Constitution](#) which concerns consolidation of counties with municipalities and other political subdivisions.

QUESTION:

1. Is this provision self-implementing in the absence of action by the General Assembly?

OPINION:

No. [Article VIII, Section 12 of the South Carolina Constitution](#) provides in pertinent part that

The General Assembly shall provide by law for a referendum on such consolidations and for procedures for the framing of a charter for the new political subdivision. Such referendum shall be held only upon the request of the governing body of the county or upon petition of ten percent of the registered electors within the county.

As this provision, by its own terms, specifically requires legislation, the provision would not be self-executing. The general law regarding whether or not a constitutional provision is self-executing is set out in 16 Am.Jur.2d Constitutional Law, § 140 where it is stated that

A constitutional provision is self-executing if no legislation is necessary to give effect to it, and if there is nothing to be done by the legislature to put it in operation, unless a contrary intent is shown . . . It is also a well-established rule that constitutional provisions contemplating and requiring legislation to enforce them are not self-executing and remain inoperative except as implemented by appropriate legislation which carries out the general spirit and purpose and supplies the deficiencies. A constitutional provision which assumes the existence of certain machinery to carry it out is not self-executing where the machinery previously provided by the legislature is not geared to the carrying out of the particular constitutional mandate . . . Even if a constitutional provision contains a mandatory requirement that the legislature adopt a particular provision, there is no remedy if the legislature fails to obey such constitutional mandate.

cf. [Murphee v. Mottel](#), 267 S.C. 80, 226 S.E.2d 36 (1976).

QUESTION:

Would a county council have to honor a petition containing the required number of signatures and calling for a referendum on consolidation?

OPINION:

No. It would appear that existing procedures for referendums would be insufficient legal basis for this constitutionally required referendum. See in general, South Carolina Code of Laws, 1976, [Section 5-3-30](#) (consolidation of two or more municipal corporations).

*2 Section 4-9-30(16) authorizes a county to conduct advisory referendums. However, it would appear that this provision would not be sufficient for purposes of a referendum under [Article VIII, Section 12 of the South Carolina Constitution](#) for two reasons. First, the language of the constitutional provision provides that the consolidation shall not take place unless approved by a majority of the qualified electors voting on the question. However, without statutory guidelines for this referendum, specifically guidelines defining the term 'qualified electors', the exact criteria for determining if the proposition carried would not be clear; i.e., would it be by a majority vote in the county; or, by majority vote of the county and also the municipality or political subdivision involved; what would be the result if the proposition does not carry in the municipality or political subdivision but does in the county at large. The advisory referendum of Section 4-9-30(16) only anticipates a general countywide referendum, not a question such as the one presented by consolidation under this constitutional provision. Secondly, the constitutional provision expressly provides that

The General Assembly shall provide by law for a referendum on such consolidations and for procedures for the framing of a charter for the new political subdivision . . . Such consolidation shall not take place unless approved by a majority of the qualified electors voting on the question of the consolidation and on the charter therefor in the same election or in successive elections held for these purposes. (emphasis added).

There is at this time no statutory procedure for framing a charter and these provisions must be voted on in the referendum election or a subsequent election. Therefore, the advisory referendum of Section 4-9-30(16) would not appear to be a sufficient grant of authority under which to conduct a consolidation election.

As the constitutional provision is not self-executing its provisions cannot be implemented without the appropriate legislation. Therefore, a petition, presented to a county council calling for a referendum, would be unenforceable without a statutorily provided procedure for a referendum on consolidation and the framing of a charter.

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