

1981 WL 157859 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 9, 1981

**\*1 SUBJECT: Municipal Corporations; Public Officers; Statutes**

(1) A 1974 Act giving the members of the Commissioners of Public Works of the Town of Summerville four (4) year terms is unconstitutional as special legislation.

Walter M. Bailey, Jr.  
Attorney for Town of Summerville

DISCUSSION:

You have requested an opinion as the attorney for the Town of Summerville regarding the Summerville Commissioners of Public Works. You have stated that in 1974 an Act was passed giving the members of the Commissioners of Public Works four (4) year terms. This law varied from the general law as set out at [Section 5-31-210 of the South Carolina Code of Laws, 1976](#), which requires staggered terms of six (6) years.

QUESTION:

1. Is the 1974 Act invalid as special legislation?

OPINION:

Yes. I would agree with your conclusion that the Act is unconstitutional as special legislation. A 1963 opinion of this office, which is cited following [Section 5-31-210](#), held that a special law enacted for the City of Laurens increasing its membership from three to five was not special legislation. The opinion stated that there appeared to be a trend toward ‘. . . tightening the restrictions as to what special legislation will be allowed . . .’. However, the writer believed that the requirements of Article III, Section 34 are ‘. . . relaxed somewhat insofar as municipalities are concerned, which provides that the General Assembly may make special provisions for municipal governments.’ (A copy of this opinion is enclosed).

The reasoning in this opinion would be inapplicable to the present question due to the subsequent case law regarding Article III, Section 34 since the date of that opinion and by a new section of the South Carolina Constitution enacted by the General Assembly in 1972 and ratified in 1973, Article VIII, Section 10. This section provides that No laws for a specific municipality shall be enacted, and no municipality shall be exempted from the laws applicable to municipalities or applicable to a particular form of government selected by any municipality as authorized by Section 9 of this article.

See also Article VIII, Section 9 and 1977 Opinion of the Attorney General, Opinion Number 77-129 which held that general legislation would be necessary to abolish the Town of Manning Water Commission and vest its power and authority in the Town of Manning. (Copy enclosed).

Therefore, it would appear that a general law should have been enacted and that a special law providing an exception to the general law only for the Town of Summerville would be within the constitutional prohibition regarding special legislation.

QUESTION:

2. If the 1974 Act is not invalid as special legislation, did the 1980 amendment to [Section 5-31-210](#), which did not refer to the 1974 Act for Summerville, invalidate this Act?

OPINION:

In light of the above answer it is not necessary to address your second question which requests a further opinion if we concluded that the 1974 Act was not special legislation.

\*2 Treva G. Ashworth  
Senior Assistant Attorney General

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