1981 WL 157935 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
August 26, 1981

***1** Honorable Richard W. Riley
Governor, State of South Carolina
Post Office Box 11450
Columbia, South Carolina 29211

Dear Governor Riley:
By letter of August 25, 1981, you have requested this Office to review three acts for constitutional weakness. Mr. McLeod has referred H.3120 (R-254) to me for reply.

This Act reapportions the county governing body of York County and amends a 1976 apportionment of the county following the implementation of the Home Rule Act. 1976 (59) 2535, Act 903.

South Carolina Code of Laws, 1976, Section 4-9-90 specifically authorizes that
[a]ll districts shall be reapportioned as to population by the General Assembly within one year of the adoption by the State of each federal decennial census except that the General Assembly may delegate this authority to any county or group of counties.

There is presently awaiting second reading a proposed bill, S407, which would give the power to reapportion to each county council. As this bill has not passed and as York County has not been delegated the power to reapportion, it would appear the General Assembly pursuant to Section 4-9-90 would be the only body with the power to reapportion the county.

I assume your concern actually involves whether or not the quoted provision of Section 4-9-90 would be deemed constitutional in a court of law. This provision may conflict with Article VIII, Section 7 of the South Carolina Constitution and with prior opinions of the Supreme Court which clearly demonstrate that the Court did not believe that once Home Rule became operational that the General Assembly should inject its will into the county government. Van Fore v. Cooke, 273 S.C. 136, 255 S.E.2d 339 (1979). However, only a court of competent jurisdiction could definitively decide this question and they may very well find this not to be an intrusion into the county government but a proper exercise of the General Assembly's power.

In any event, the questions raised in this regard to not seem sufficient to overcome the presumption of validity which attaches to all acts of the General Assembly. University of South Carolina v. Mehlman, 245 S.C. 180, 139 S.E.2d 771 (1964).

Therefore, it is the opinion of this office that H.3120 (R254) is a proper enactment of the General Assembly pursuant to the statutory provisions of 4-9-90.
Sincerely,

Treva G. Ashworth
Senior Assistant Attorney General

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