

1980 WL 120911 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 3, 1980

*1 The Honorable Heyward McDonald
Senator—District No. 7
604 Gressette Senate Office Building
Columbia, South Carolina 29202

Dear Senator McDonald:

You have asked the opinion of this Office on whether a section of a proposed bill contravenes [Article VIII, § 15 of the South Carolina Constitution](#), which requires the consent of a municipality to the use of its streets or other public property by utilities. The relevant section provides in part:

... no area having been assigned for electric service purposes by the Public Service Commission pursuant to Chapter 27, Article 5 of Title 58 shall be annexed under this Chapter unless the annexing municipality first consents that the electric service shall continue to be supplied in the annexed area under the provisions of Article 5 of Chapter 27 of Title 58, and that the assignment of electric service areas by the Public Service Commission in effect at the time of annexation shall continue in effect in the annexed area, subject to reassignment made pursuant to Section 58-27-650, notwithstanding any contrary provisions, including the provisions of Sections 58-27-670, 58-27-1360, and 33-49-250.

Electric suppliers having services annexed into a municipality shall agree to provide electric service within the annexing municipality under the same general terms and conditions as such service is provided by other electric suppliers already operating within the municipal corporate limits. In the event that an electric supplier does not agree to the conditions stated above, the provisions of 58-27-670, 58-27-1360, and 33-49-250 shall apply.

As a prerequisite to the annexation by a municipality of an area assigned for electric service by the Public Service Commission pursuant to the provisions of Article 5, Chapter 27, Title 58, Code of Laws of South Carolina, 1976, the proposed section expressly requires that consent of the municipality¹ to the continuation of the assignment in effect at the time of annexation. This prerequisite to the annexation of such areas does not conflict with [Article VIII, § 15](#), and in fact reiterates the consent mandated thereby. Opinion to Senator Heyward McDonald, dated August 21, 1980; [City of Nicholasville v. Blue Grass Rural Electric Cooperative](#), 514 S.W.2d 414 (Ky. 1974); see, [Riley v. Union Station Co.](#), 71 S.C. 457 (1904). The language on the reassignment of such areas is more difficult to resolve with regard to [Article VIII, § 15](#).

It is not clear from the language that the consent required by the proposed section is intended to apply to the reassignment of annexed areas, or portions thereof, to another electric supplier pursuant to § 58-27-650. Because a reassignment grants the right to use the streets and other public places of a municipality for the operation of electric facilities, the implementation of such an assignment would be subject to the consent of the municipality under the mandate of [Article VIII, § 15](#). Opinion to Senator McDonald, *supra*, pp. 3-4; [Riley](#), *supra*; [City of Nicholasville](#), *supra*; McQuillan, [Law of Municipal Corporations](#), 3rd ed., § 34.28, p. 77. Although the consent specified in the proposed section may be intended to apply to the reassignment of such areas, the study committee should consider revising or clarifying the language on this to avoid interpretations of it that would conflict with [Article VIII, § 15](#).

*2 Based on the foregoing, it is the opinion of this Office that the proposed section on the continuation of assigned electrical service in annexed areas does not contravene [Article VIII, § 15](#), but that the language on the reassignment of such service in these areas should be clarified to avoid interpretations that would conflict with this constitutional provision.

Sincerely,

James M. Holly
Assistant Attorney General

Footnotes

1 Presumably this means the consent of the governing body of a municipality as specified in [Article VIII, § 15](#).

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