

1977 S.C. Op. Atty. Gen. 38 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-36, 1977 WL 24379

Office of the Attorney General

State of South Carolina

Opinion No. 77-36

January 28, 1977

\*1 The Honorable Gilbert E. McMillan

State Senator

402 Colleton Avenue, S.E.

Aiken, South Carolina 29801

Dear Senator McMillan:

In confirmation of our recent discussion concerning the authority of the legislative delegation to designate the secondary roads of the county to be placed in the State highway system, I advise:

The Supreme Court has considered this question precisely and has ruled that the duties involved in the selection of roads of this nature are not incidental to the legislative function but relate exclusively to the executive powers of the county government. The Court further stated that ‘any attempt to give the delegation the discretion to say what—roads should be constructed or improved—is a clear violation of Article I, Section 14 of the Constitution (separation of powers) is therefore null and void.’

This decision has been reaffirmed a number of times since its issuance in 1959.

There is therefore no question but that the authority to designate roads within the county to be included in the State secondary system is purely an executive function which cannot constitutionally be exercised by the legislative delegation.

The advent of home rule pursuant to Article VIII of the Constitution emphasizes the principle heretofore laid down by the Supreme Court, that the authority to which reference is made can only be vested in the governing bodies of the counties. The Court has struck down as unconstitutional a type of county government known as Form V, which basically would have restored the legislative authority formerly exercised by that branch of the State government prior to the adoption of the Home Rule amendment. The purpose of the Home Rule amendment, the Court has stated, is a recognition ‘that county government should function in the county seats rather than at the State Capitol. If the counties are to remain units of government, the power to function must exist at the county level. The General Assembly should devote its full attention to problems at the State level.’

I therefore advise that the selection of secondary roads of the State highway system is constitutionally beyond the authority of the legislative delegation of any county.

Very truly yours,

Daniel R. McLeod

Attorney General

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