

1977 S.C. Op. Atty. Gen. 15 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 77-5, 1977 WL 24348

Office of the Attorney General

State of South Carolina

Opinion No. 77-5

January 5, 1977

\*1 Senator Tom Turnipseed  
560 Meeting Street  
West Columbia, South Carolina 29169

Senator William E. Knotts  
15 West Street  
Williston, South Carolina

Senator Nikki G. Setzler  
P. O. Box 1036  
West Columbia, South Carolina 29169

Gentlemen:

You have requested opinions from this Office as to various aspects of your duties, powers and functions as members of a legislative delegation.

1. In response to your inquiry as to whether or not you can introduce legislation which, if enacted, would merge county boards of voter registration and county election commissions on a county-by-county basis, my opinion is that such legislation would most probably be violative of that portion of Article VIII, Section 7 of the South Carolina Constitution of 1895, as amended, which proscribes laws for a specific county. See, e.g., Knight v. Salisbury, 262 S.C. 565, 206 S.E.2d 875 (1974); Duncan v. The County of York, 267 S.C. 327, 228 S.E.2d 92 (1976); cf., Kleckley v. Pulliam, 265 S.C. 177, 217 S.E.2d 217 (1975); Moye v. Caughman, 265 S.C. 140, 217 S.E.2d 36 (1975). Notwithstanding the fact that similar legislation has heretofore been enacted even after the effective date of the provisions of new Article VIII [see, e.g., 58 STAT. 102 (1973)] and that such legislation, since it has been enacted, is presumed constitutional until and unless a court of competent jurisdiction declares otherwise, if an action were brought pursuant to the Uniform Declaratory Judgments Act [§§ 10–2001 et seq., CODE OF LAWS OF SOUTH CAROLINA (1962)], in my opinion, that legislation would be invalidated.

2. In response to your inquiry as to whether or not there can exist separate legislative delegations for the Senate and House members, I know of no restriction on such an arrangement for the purpose of meetings and other administrative functions; however, the use of the term ‘legislative delegation’ in the singular as it appears in statutory provisions indicates to me that the function to be performed or power to be exercised by that body pursuant to such legislation is to be so performed or exercised jointly. For instance, the provisions of Act No. 283 of 1975, the ‘home rule’ legislation, require each county council to provide office space, personnel, supplies and equipment ‘for the operation of the county legislative delegation office’ [see, § 14–3717, CODE OF LAWS OF SOUTH CAROLINA, 1962, (Cum. Supp.)]. In my opinion, a county council is not thereby required to provide separate office space, personnel, supplies and equipment for the Senate members of the delegation and another for the House members thereof.

3. In response to your request for an opinion as to the method by which county appointments and recommendations therefor are to be made by the ‘legislative delegation’ of each of the counties comprising Senate District No. 8—Aiken, Bamberg, Barnwell, Edgefield and Lexington—the provisions of Section 30–203.1, CODE OF LAWS OF SOUTH CAROLINA, 1962,

(Cum. Supp.) apply inasmuch as none of those counties has more than five members of the House of Representatives. Section 30–203.1 provides in part:

\*2 In multi-county senatorial districts, all references in existing statutes relative to county affairs and appointments to the members of a county legislative delegation or language of similar import, except in statutes relating to appointments required to be made upon the advice and consent of the Senate, in a determination of action by the delegation under the statutes, shall mean a majority of the members of the House of Representatives resident in the county when such county is without a resident Senator and one half of such members when such county has a resident Senator and shall include in all such counties with or without a resident Senator at least one Senator thereof in those districts having not more than two Senators and at least two Senators in those districts having at least three Senators; . . .

Upon an application of the provisions of that Code section to each of the counties included in Senate District No. 8, appointments, as well as recommendations therefor, to county boards, commissions and agencies made by the legislative delegation should be made according to the following:

#### TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

The use of the term ‘existing’ statutes in Section 30–203.1 does not mean that the definition of ‘legislative delegation’ contained therein applies only to those statutes in existence as of July 6, 1967, the date of the enactment of Section 30–203.1 [55 STAT. 1002 (1967)]; instead, it includes statutes of continuing validity, *i.e.*, prospective statutes as well as those already enacted, unless a contrary intention is evidenced. See, 1A SUTHERLAND, STATUTORY CONSTRUCTION § 27.03 (4th Ed. 1972).

Moreover, the statutory scheme for legislative delegation action vis a vis county appointments, as well as recommendations therefor, provided by Section 30–203.1 is not constitutionally infirm. In fact, there is no authority that I have found that would indicate the necessity for ‘weighted voting’ by the respective members of a multi-member election district as far as non-legislative county appointments are concerned in order to prevent a violation of the one man one vote principle. On the contrary, the authorities indicate that the one man one vote principle does not extend beyond the popular election of the particular legislative officers to include the appointment or other selection of non-legislative officials. See generally, [Sailors v. Board of Education of the County of Kent, et al.](#), 387 U.S. 105, 18 L.Ed.2d 650, 87 S.Ct. 1549 (1967); [Kramer v. Union Free School District No. 15, et al.](#), 395 U.S. 621, 23 L.Ed.2d 583, 87 S.Ct. 1886 (1969); [Oaks v. Board of Trustees, Northeast Mississippi Junior College, et al.](#), 385 F.Supp. 392 (N.D. Miss., 1974).

\*3 4. Your final inquiry as to the meaning of the phrase ‘resident Senator’ and the like as applied to a county where a Senator does not reside is answered by the discussion hereinabove under item numbered 3, as well as by a previous opinion of this Office, a copy of which is enclosed. 1972 OPS.ATTY.GEN. No. 3370. That opinion concludes that the Governor could appoint the Dorchester County Election Commissioners upon the recommendation of one of that county's two non-resident Senators and a majority of the House members from that County pursuant to a statute containing the phrase ‘upon the recommendation of the Senator.’ I am also enclosing a copy of another opinion which I believe is instructive. 1968 OPS.ATTY.GEN. No. 2550. With kind regards,

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