

1977 S.C. Op. Atty. Gen. 130 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-156, 1977 WL 24498

Office of the Attorney General

State of South Carolina

Opinion No. 77-156

May 16, 1977

*1 James A. Bell, Esquire
Attorney at Law
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St. George, South Carolina 29477

Dear Mr. Bell:

You have requested an opinion from this Office as to whether or not the following provisions of Article VIII, Section 16 of the South Carolina Constitution of 1895, as amended, are self-executing:

Any county . . . may, upon a majority vote of the electors voting on the question in such county . . ., acquire by initial construction or purchase and may operate water, sewer, transportation or other public utility systems and plants other than gas and electric; . . .

In my opinion, they are self-executing and a county governing body should follow the requirements set forth in the provisions of Title 23 of the South Carolina Code to the extent that they are applicable insofar as the conducting of the election contemplated by Article VIII, Section 16 is concerned. See, e.g., § 23-400.21, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended (Cum. Supp.).

The South Carolina Supreme Court in [Murphree v. Mottel](#), 267 S.C. 80, 226 S.E.2d 36 (1976) interpreted the provisions of Article VIII, Section 16 and declared:

The lower court properly ruled that the constitutional provision is self-executing, . . .

The Court went on to say that the Aiken County governing body was the proper authority to instigate the election 'after appropriate legal notice and publication.' In addition, the comments of the drafters of new Article VIII indicate that they intended the provisions of Section 16 thereof not to alter the intent of the provisions of former Article VIII, Section 5 other than to broaden them to include counties and consolidated political subdivisions, to wit:

The Committee recommends the retention of this section. Its sense is almost identical with the current provision, except that it has been changed to include counties which may consolidate with municipalities within the county. Final Report of the Committee to Make a Study of the South Carolina Constitution of 1895, Article VII, Section Q, Comments at 93.

Former Article VIII, Section 5 had been held to be self-executing when construed together with the provisions of Article II, Section 13 [now Article XVII, Section 7B] and former Article 8, Section 7. See, Enterprise Real Estate Co. v. City Council, 107 S.C. 492, 93 S.E. 184 (1917); cf., Dick v. Scarborough, 73 S.C. 150, 53 S.E. 86 (1905). Whether or not the petition requirement of Article XVII, Section 7B must be met by a county seeking to conduct an Article VIII, Section 16 election inasmuch as Article VIII, Section 16 is the successor to former Article VIII, Section 5 is unclear.

In response to your inquiries as to when such an election can be held and what form of notice and publication is required, in my opinion, a county governing body is not restricted to the general election time since the constitutional provision does not so restrict it. I think that such an election could be included within the statutory definition of 'special election' [see, § 23-2(2), CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended (Cum. Supp.)] and, consequently, may be conducted by the

county governing body at any time after notice and publication. I think that the Supreme Court may have held likewise, at least impliedly, since it did not specify in Murphree v. Mottel that such an election must be conducted at the same time as a general election. As to notice and publication requirements, the provisions of Title 23 do not contain any which are applicable here. Cf., § 23-400.72, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended (Cum. Supp.). In the absence of statutory guidelines, the general rule is most probably one of reasonableness. Cf., 29 C.J.S. Elections § 73 at 170 (1965). My understanding is that the Dorchester County Council has published notices of its Article VIII, Section 16 election to be held on May 17, 1977, once a week for four weeks in three newspapers. If so, I think that this notice and publication is entirely adequate.

With kind regards,

*2 Karen LeCraft Henderson
Assistant Attorney General

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