

1977 WL 37198 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 1, 1977

*1 Honorable Harris P. Smith

Senator

District No. 1

407½ E. First Avenue

Easley, SC 29640

Dear Senator Smith:

This letter is to confirm our telephone conversation of July 29, 1977. You have inquired if the Legislative Delegation or the local county council would recommend appointments to the Pickens County Election Commission. In 1969 and 1971 two Acts were enacted [Act No. 330 of 1969, Act No. 280 of 1971] which devolved the power of appointment of all boards onto the existing county council. The question has now arisen if this legislation is still in effect following the enactment of the Home Rule Act.

It has been the prior opinion of this Office that these Acts do not survive the enactment of the Home Rule Act, as they were Acts granting powers to a previously existing form of government. This form of government was replaced by the present council established pursuant to the provisions of Act No. 283 of 1975, the "home rule" legislation. The present Council possesses those powers which Act No. 283 prescribes for it, as well as those prescribed by other general laws. See, e.g., 58 STAT. 2018 (1974). The devolution of the recommendation and appointment powers upon the Pickens County Council created by 1969 and 1971 Acts have not been similarly conferred upon the present Council, either expressly or impliedly, by the provisions of Act No. 283 of 1975. In fact, Section 4-9-170 of the 1976 Code provides in part:

... Each council shall have such appointive powers with regard to existing boards and commissions as may be authorized by the General Assembly ..., but this authority shall not extend to school districts, special purpose districts or other political subdivisions created by the General Assembly; (Emphasis added).

Pursuant to this provision, various county councils have been statutorily vested with the recommendation and appointment powers formerly possessed by their respective legislative delegations. See, e.g., 59 STAT. 23 (1975); 59 STAT. 2187 (1976). Such legislation, however, has apparently not been re-enacted with regard to Pickens County; and therefore, the Act authorizing the County Council to recommend appointments would no longer be effective following the Home Rule Act.

Very truly yours,

Treva G. Ashworth

Assistant Attorney General

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