

1976 S.C. Op. Atty. Gen. 65 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4256, 1976 WL 22876

Office of the Attorney General

State of South Carolina

Opinion No. 4256

February 11, 1976

**\*1** The Saluda County Disaster Preparedness Agency established by Resolution of the County governing body pursuant to authority contained in Act No. 128 of 1973 is lawfully constituted and responsible for the organizing, planning and otherwise preparing for disaster response operations in Saluda County.

TO: Director

South Carolina Disaster Preparedness Agency

#### QUESTION PRESENTED

Where there exists with regard to civil defense matters in Saluda County both a special law passed by the General Assembly in 1963 and a local ordinance enacted by the County governing body in 1975, to what extent are each enforceable and which would control in the event of a conflict in their terms?

#### STATUTES, CASES, ETC., INVOLVED

Act No. 888 of 1958 (previously codified as Chapter 3, Title 44, Code of Laws of South Carolina, 1962, §§ 44–301 to 44–308); Act No. 116 of 1963 (presently § 44–981, Code of Laws of South Carolina, 1962, as amended); Act No. 128 of 1973 (presently contained in §§ 44–311 to 44–318, Code of Laws of South Carolina, 1962, as amended); Resolution approved June 13, 1975, by the Saluda County Board of Commissions relative to Civil

Defense and Disaster Preparedness in Saluda County.

#### DISCUSSION OF ISSUE

Your agency has raised questions concerning the existence and resolution of possible conflict between special civil defense laws passed by the General Assembly for the various counties during the 1960's and more recent local enactments by the County governing bodies dealing with disaster preparedness and civil defense. Specific reference is made to Saluda County and legislation relating thereto as an example of this possible conflict.

In 1963 the General Assembly of South Carolina enacted Act 116 of 1963, entitled 'An Act To Create An Office For Civil Defense For Saluda County.' That Act became effective on April 11, 1963, and exists today without amendment. See § 44–981, Code of Laws of South Carolina, 1962, as amended. That special legislation created an Office for Civil Defense for Saluda County having 'the responsibility of establishing an emergency preparedness plan for natural disasters and national emergencies, of insuring preparedness of the county to adequately deal with such disasters, and the providing for the common defense and protection of public peace, health, safety of lives and property of the county. Provision was also made for the selection of a County Civil Defense Director by the County Legislative Delegation, including Senator.

Although no specific reference thereto is contained in Act 116 of 1963, it is apparent that such, along with other special acts for other counties, was enacted pursuant to Act No. 888 of 1958, then known as the 'South Carolina Civil Defense Act' (formerly

codified as Chapter 3 of Title 44, Code of Laws of South Carolina, 1962). Act No. 888 of 1958 established a State Civil Defense Agency as well as other organizations for civil defense within the State. Section 5 thereto provided:

\*2 The Legislative Delegation, including the Senator, from each county, and mayors of municipalities within such counties, shall select a County Chairman who shall organize and establish a county organization for Civil Defense in accordance with the State Civil Defense plan and program. Such County Chairman shall cooperate with adjacent counties in their defense plans and cooperate with the Director in coordinating that of his own county with the plan of other counties and the State. Any defense plan devised by a County Chairman shall have the approval of the Legislative Delegation, including the Senator, and mayors of municipalities within such counties, before being published, promulgated, or acted upon.

Act 888 of 1958 was expressly repealed by Act No. 128 of 1973, entitled 'An Act To Provide For Civil Defense And Disaster Control In South Carolina.' Act No. 128 of 1973 did not, however, expressly repeal Act No. 116 of 1963 or any of the other similar local or special acts which had been enacted pursuant to Act No. 888 of 1958. It is this failure of Act No. 128 of 1973 that serves as the source of potential conflict.

Section 7 of Act 128 of 1973 states in part:

(2) County and municipal governments shall be responsible for:

(a) Organizing, planning and otherwise preparing for prompt, effective employment of available resources of the county or municipality to support disaster operations of the municipalities of the county, or to conduct disaster operations in areas where no municipal capability exists.

(b) Coordinating support to municipal disaster operations from other sources including State and Federal assistance as well as support made available from other municipalities of the county.

Act No. 128 of 1973 as subsequently amended appears as §§ 44-311 through 44-318, Code of Laws of South Carolina, 1962, as amended.

Apparently in recognition of this responsibility, the Saluda County Board of Commissioners passed a Resolution 'To Create The Saluda County Disaster Preparedness Agency And To Provide For Civil Defense And Disaster Preparedness in Saluda County.' the effective date of this Resolution was June 13, 1975, and its purpose is to create the Saluda County Disaster Preparedness Agency and to establish procedures for the efficient utilization of the county's facilities in the event of enemy attack or natural disaster.

In the absence of finding an implied repeal of Act No. 116 of 1963, Saluda County would thus appear to be authorized by law to have both an Office of Civil Defense responsible to the County Legislative Delegation and charged with preparing a plan for emergency preparedness (pursuant to Act No. 116 of 1963) and the Saluda County Disaster Preparedness Agency (pursuant to the 1975 Resolution of the County governing body) through which the Saluda County Board of Commissioners can act to implement a plan for disaster preparedness. You have advised, however, that in reality there exists only the Saluda County Disaster Preparedness Agency, the County Office of Civil Defense having ceased to operate upon the passage of this local legislation. You have further advised that in every other county where an Office of Civil Defense had been created, the same similarly ceased to exist upon the passage of local legislation creating county disaster preparedness agencies. You also indicate that neither the Saluda County Legislative Delegation nor others has sought to involve itself in these new county disaster preparedness agencies. Thus there is no conflict either under the law or in fact. Under these circumstances, there is no need to determine whether Act No. 116 of 1963 was, in fact, impliedly repealed by Act No. 128 of 1973.

\*3 Nevertheless, it is obvious that the intent of the General Assembly in passing Act 128 of 1973 was to provide for the creation and control of local civil defense by local governing bodies, and it may be strongly argued that the express repeal of all of Chapter 3 of Title 44 of the 1962 Code, Act No. 888 of 1958 (which had placed the planning and control of county civil

defense matters in the hands of the Legislative Delegation) also impliedly repealed all special acts relating to the county civil defense, including Act No. 116 of 1963, which had been enacted pursuant thereto and which perpetuated the authority of the various county legislative delegations in such matters. Clearly, the Saluda County governing body was authorized by Act No. 128 of 1973 (§§ 44–311 through 44–318, Code of Laws of South Carolina, 1962, as amended) to enact local legislation to organize, plan and otherwise prepare for disaster response operations within the county.

#### CONCLUSION

In summary, it is the opinion of this office that the Saluda County Disaster Preparedness Agency was lawfully created by the 1975 Resolution of the governing body of that county and properly charged with duties and responsibilities of disaster organized, planning and preparation.

John P. Wilson

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#### SUGGESTED LANGUAGE TO BE USED IN AMENDING SECTION 44–317

That section 7 of Act No. 128, Acts and Joint Resolutions of the General Assembly of the State of South Carolina be amended by changing paragraph (3) thereof to subparagraph (c) of paragraph (2) and adding thereto a new subparagraph (d) so that when so amended paragraph (2) shall read as follows:

(2) County and municipal governments shall be responsible for:

(a) Organizing, planning and otherwise preparing for prompt, effective employment of available resources of the county or municipality to support disaster operations of the municipalities of the county, or to conduct disaster operations in areas where no municipal capability exists.

(b) Coordinating support to municipal disaster operations from other sources including State and Federal assistance as well as support made available from other municipalities of the county.

(c) Developing and implementing a shelter plan to protect the populace from the hazards of radioactive fallout in the event of a nuclear disaster, and to provide for the congregate housing and care of persons displaced or rendered homeless as a result of a natural or man-made disaster.

(d) In this connection any county office, agency, or organization for civil defense or emergency preparedness previously established by Act of the General Assembly and in existence prior to April 6, 1973, shall continue with full authority and force until a new office, agency or organization be established for such purposes by the governing body of such county as herein required.

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