

1976 WL 30692 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 2, 1976

*1 Representative H. Keith Vanderford
State House
Columbia, South Carolina

Dear Representative Vanderford:

You have requested an opinion on several matters relating to Union County and I shall respond to them in the order in which they were asked:

1. The question of whether the county governing body or the General Assembly has the authority to draw single member district lines and to determine the number of members of the county governing body, as well as their terms of office, is presently before the South Carolina Supreme Court. Until that Court decides the issue, no concrete answer to that question can be given.

2. Article VIII, Section 1 of the South Carolina Constitution provides that the powers possessed by counties, *inter alia*, on March 7, 1973, are to continue until changed in a manner provided by law; therefore, the powers presently possessed by the Union County Board of Township Commissioners are those which it had on March 7, 1973, and those subsequently granted to it by the General Assembly acting pursuant to general law. *See, e.g.*, 58 STAT. 2018 (1974). Once the provisions of Act No. 283 of 1975, the 'home rule' legislation, are effective, the Union County governing body will have the powers therein set forth.

3. As I understand the matter of the Union County Court Judge, he has petitioned the State Supreme Court (to which petition our Office has not objected) to amend its February 10, 1976, Order so that all cases involving juveniles which were pending in the Union County Family Court on December 10, 1975, will be transferred to the Union County Court for disposition. The February 10, 1976, Order presently requires all of those cases to be transferred to the Union County Court of General Sessions and its probation and parole authorities. Pursuant to § 15-1681.7 of the 1962 Code, the salaries of the Union County Court officers are to be fixed annually in the Union County appropriation act; however, because of the passage of Act No. 284 of 1975, the budgetary and fiscal matters of Union County are now to be decided by the Township Commissioners. Unless Act No. 284 of 1975 is successfully challenged in a court of competent jurisdiction, the legislative delegation probably does not have any control over the salary of the Union County Court judge.

4. Regarding Acts No. 284 and No. 437 of 1975, if an action challenging their constitutionality were brought pursuant to §§ 10-2001, *et seq.* of the Code, my opinion is that both of them would most probably be declared unconstitutional as violative of Article VIII, Section 7 of the South Carolina Constitution. Unless such an action is brought, however, those Acts are presumed constitutional and are enforceable. One possible alternative might be the passage of an act repealing the two 1975 acts, although the same constitutional objection might apply to such an act, *i.e.*, that it constitutes special legislation.

5. § 27-401(12) of the 1962 Code authorizes the sheriff of each county to charge thirty (30) cents per day for dieting prisoners in jail; Section 1, Item 8(B)1 of Act No. 1504 of 1974, however, allowed the Union County Sheriff to charge \$1.80 per day per prisoner for dieting 'if so much be necessary.' Since the 1974 Act appropriated funds for the ordinary operating expenses of Union County for the fiscal year 1974-1975, the temporary provisions of that Act expired as of June 30, 1975.

*2 6. As to county employees furthering a private business while on county time, if such practice does occur, it would most probably constitute a ground for termination. See, 57 STAT. 479 (1971).

7. Several key provisions of Act No. 283 of 1975, the 'home rule' legislation, are presently being challenged in the original jurisdiction of the State Supreme Court.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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