1979 WL 43469 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
July 18, 1979

***1** Honorable Richard W. Riley
Governor
State House
Columbia, South Carolina 29211

Dear Governor Riley:
You have requested an opinion from my Office as to the constitutionality of an act (R-248) which establishes single-member election districts for the election of members of the Chester County Council under the council-supervisor form of county government, provides for the election of those members and the supervisor and their respective terms of office and provides for the election of the Chester County Board of Trustees. In my opinion, the act is most probably constitutional as hereinafter discussed.

The provisions of Act No. 283 of 1975, the 'home rule' legislation, originally specified that all South Carolina counties were either to select a form of county government and method of electing members of the county governing body by referendun before July 1, 1976, or to have the form of government (including the method of election) designated in that Act if no referendum was held by that date. § 4-9-10(a) and (b), CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended. Chester County did not conduct a referendum on the form of government or the method of election by July 1, 1976, and so, according to Section 4-9-10(b) of the Code, it was assigned the council-administrator form of government and its council members were to continue to be elected at large from residency districts as they had been previously, pursuant to Act No. 823 of 1966. 54 STAT. 2136 (1966). In 1978, however, the General Assembly enacted Joint Resolution No. 668 of 1978 [60 STAT. 2321 (1978)] which provides in part as follows:
Notwithstanding the provisions of Sections 4-9-10 and 4-9-90 of the 1976 Code, if a referendum as to the form of county government or the method of election of council members has not been conducted pursuant to the provisions of Section 4-9-10(a), a county council may conduct such referendums on either question until July 1, 1979. As used in this resolution 'method of election' means whether members are to be elected from election districts or at large from the county. Except as to the time limitations provided therein, referendums shall be conducted in accordance with procedures prescribed in Sections 4-9-10 and 4-9-90 of the 1976 Code. All provisions of Chapter 9 of Title 4 of the 1976 Code shall apply to the forms of government and method of election selected pursuant to the referendums authorized by this resolution. [Emphasis added.]

Pursuant to this authority, Chester County conducted a referendum and selected the council-supervisor form of government and the single-member method of election. Section 4-9-10(a) of the Code provides that the General Assembly is to provide for the number of council members and that, if the single-member election district method is selected by referendum, then the districts are to be designated by the General Assembly. Section 4-9-90 of the Code authorizes the General Assembly to designate either two-year or four-year terms of office for county council members. The type of 'local' legislation required in order for the General Assembly to exercise the authority reserved to it by Sections 4-9-10(a) and 4-9-90 was expressly upheld in Duncan v. The County of York, 267 S.C. 327, 228 S.E.2d 92 (1976), as 'one-shot' legislation, permissible during the period of transition from legislative delegation control of local matters to local control thereof. Furthermore, as the hereinabove emphasized language indicates, all provisions of Chapter 9 of Title 4 (including Sections 4-9-10(a) and 4-9-90) are to apply to the results of any referendum conducted by July 1, 1979.

***2** As I see it, the question is whether or not the General Assembly, by the enactment of the 1978 legislation, can extend the transition period for conducting initial referendums so as to make otherwise unconstitutional local legislation valid. In Duncan, the South Carolina Supreme Court implicitly recognized that the January 1, 1980, date specified in the 'home rule' act as the date on which county councils are to become vested with appointive and recommendatory powers formerly vested in the legislative delegation and with the authority to enact ordinances in conflict with special laws is not unreasonable, to wit:

Plaintiff also objects to retention by the General Assembly of the power to appoint until January 1, 1980, all county boards, committees and commissioners, whose appointment is not provided for by the general law or the Constitution (§ 14-3714). There is imposed upon the General Assembly, at least by implication, the duty of providing for an orderly transition of power from the old system to the new. We cannot say that the retention of this power of appointment is not at least reasonably necessary, or debatably so, to an orderly transition, and inasmuch as there is a strong presumption of constitutionality of all legislative acts, we refrain from holding that this authority is not constitutionally permissible. 228 S.E.2d at 99.

Nevertheless, in the most recent decision of the South Carolina Supreme Court concerning the prohibitory 'no laws for a specific county' language of Article VIII, Section 7 of the South Carolina Constitution, the Court struck down 1978 local legislation designating singlemember election districts for Horry County Council members. Van Fore v. Cooke, —— S.C. —— (Opinion No. 20953 filed May 3, 1979.) Although the Court speaks restrictively in Van Fore of the 'limited role' of the General Assembly ?? effectuating the transition, there is a difference between the Horry County legislation and this act which is a critical one. In Van Fore, the Court concluded that the Horry County legislation was not the one-shot permissible type approved in Duncan but, instead, represented an attempt by the Legislature to 'repeatedly' inject its will into the operation of county government. Horry County's initial method of election had been objected to by the United States Justice Department and so the 1978 legislation was, in effect, 'second-shot' local legislation. The Court concluded that the State Constitution 'does not permit the general assembly to enact successive special legislation in an attempt to secure Justice Department sanction.' Slip Op. at 13 [emphasis added]. But this legislation is the first that the General Assembly has enacted with respect to Chester County and, consequently, it does not represent a repeated or successive attempt to inject the Legislature's will into local matters. Rather, it is legislation 'necessary to place Article VIII fully into operation' in Chester County as was approved in Duncan. While the question is one that is certainly not free from doubt, my opinion is that this act is disinguishable from the legislation invalidated in Van Fore and is similar to that upheld in Duncan.

***3** There is a question, however, as to whether or not the language of this legislation which provides for initial three-year terms of office for the council members and the supervisor to be elected in a special election in November, 1979, is unauthorized. As noted earlier, Section 4-9-90 of the 1976 Code specifies that council members are to be elected in the general election for terms of two years or four years 'as the General Assembly may determine' and Section 4-9-410 of the 1976 Code provides that the supervisor is to be elected in the general election for a term of two or four years. To the extent that this act provides for a special election and for initial three year terms, it could be argued that it conflicts with the provisions of the 'home rule' act and is, therefore, violative of Article III, Section 34, subdivision ix of the South Carolina Constitution as a special law where a general law can be (and has been) made applicable. Nevertheless, my understanding is that local conditions in Chester County necessitate the holding of a special election in November, 1979, rather than allowing the present governing body to continue until the next general election in 1980. Moreover, the holding of a special election in November, 1979, for initial three-year terms will ensure eventual compliance with the general law provisions because the next scheduled election, November 1982, will be a general election (as Section 4-9-90 requires) for council members and a supervisor who will serve four-year terms (as Section 4-9-90 requires). As you know, the existence of peculiar local conditions has long been considered a basis for validating special legislation in the face of general law on the subject matter. Cf., Webster v. Williams, 183 S.C. 368, 191 S.E. 51 (1936). There is the additional question of whether or not the general law provisions of the home rule act can be made applicable here. For these reasons, I think that the provisions specifying initial three-year terms and calling for a special election in November, ?? are most probably valid.

The provisions relating to the election of members of the Chester County School Board of Trustees are constitutional under the authority of Moye v. Caughman, 265 S.C. 140, 217 S.E.2d 36 (1975).

Very truly yours,

Daniel R. McLeod
Attorney General

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