1978 WL 35234 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
November 21, 1978

***1** Honorable Allen Ruffin Carter
Senator
—District No. 16
1810 Clearbrook Street
North Charleston, South Carolina

Dear Senator Carter:
First, let me apologize for the delay in responding to your telephone inquiry concerning the constitutionality of proposed legislation creating a Berkeley-Charleston-Dorchester coliseum commission or similar body which would establish and manage a coliseum and related facilities to serve the three named counties as well as those adjacent thereto.

The relevant constitutional provision is Article VIII, Section 7 of the South Carolina Constitution which provides, in part, as follows:
No laws for a specific county shall be enacted. . . .

Although the South Carolina Supreme Court originally interpreted this prohibition in broad terms [see, Knight v. Salisbury, 262 S.C. 565, 206 S.E.2d 875], subsequent decisions have recognized exceptions to its proscription. See, e.g., Moye v. Caughman, 265 S.C. 140, 217 S.E.2d 36 (1975); Duncan v. The County of York, 267 S.C. 327, 228 S.E.2d 92 (1976). In Kleckley v. Pulliam, 265 S.C. 177, 217 S.E.2d 217 (1975), the State Supreme Court upheld a 1975 act which authorized the issuance of general obligation bonds of a two-county airport district and the use of the bonds for the construction and extension of airport facilities against an Article VIII, Section 7 challenge, saying:
. . . The prohibition was not intended to create an area in which no laws can be enacted. Rather, the prohibition only means that no law may be passed relating to a specific county which relates to those powers, duties, functions and responsibilities, which under the mandated systems of government, are set aside for counties. 265 S.C. at 183.

The Court decided that airport facilities are not within the exclusive power of counties to provide and that, therefore, the General Assembly can continue to legislate thereon. Moreover, the Court determined that airport facilities represent a subject matter which 'extends beyond one of purely local concern' [265 S.C. at 186], concluding that, even though the establishment and operation of an airport are purposes permitted a county, the construction and maintenance of an airport in a two-county district are matters of statewide importance.

The provisions of Act No. 283 of 1975, the 'home rule' legislation, empowers a county to make appropriations for functions and operations of the county [§ 4-9-30(5), CODE OF LAWS OF SOUTH CAROLINA, 1976], and those functions most probably include, although not expressly, those which coliseum facilities would fulfill. Nevertheless, a tricounty coliseum which would also serve additional surrounding areas seems to conform to the requirements set forth in Kleckley for permissible local legislation. The provision of coliseum facilities is certainly not a function 'set aside' for counties and the contemplated service area clearly goes beyond that of a single county. Consequently, the proposed legislation about which you have inquired might very well be upheld by the State Supreme Court under the authority of Kleckley.

***2** This matter is not free from doubt, however, and only a judicial determination made pursuant to the Uniform Declaratory Judgments Act [§§ 15-53-10 et seq., CODE OF LAWS OF SOUTH CAROLINA, 1976] will definitively resolve it.

With kind regards,

Karen LeCraft Henderson
Senior Assistant Attorney General

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