

1975 WL 28891 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 5, 1975

*1 The Honorable James B. Edwards
Governor
Columbia, South Carolina

Dear Governor Edwards:

You have requested the opinion of this Office on the validity of Sections 12 and 14 of Part II of the General Appropriations Act for the year 1975-76. These sections read as follows:

‘Section 12. Notwithstanding any court order or orders or any other provision of law, in those counties where the legislative delegation appoints the county board of commissioners or county council, all funds returned to the counties by the provisions of this General Appropriations Act and all Federal revenue-sharing funds issued to the counties, whether by executive decree or otherwise, shall be disbursed only upon the approval of a majority of the Senators and members of the House of Representatives of the specific county. The provisions hereof shall remain in full force and effect until such time as enabling legislation is adopted providing for an orderly process in the change of government of the respective counties in order to carry out the provisions of Section 7 of Article VIII of the Constitution of this State.

‘Section 14. Notwithstanding any other provisions of law, in those counties where the legislative delegations direct the county auditors to levy and the county treasurers to collect a tax of certain millage, the legislative delegations shall continue to direct the levy and collection of taxes which shall be disbursed upon the approval of a majority of the Senators and members of the House of Representatives of the specific county. The provisions hereof shall remain in full force and effect until such time as enabling legislation is adopted providing for an orderly process in the change of government of the respective counties in order to carry out the provisions of Section 7 of Article VIII of the Constitution of this State.’

It is my opinion that each of these sections is unconstitutional in that they are in violation of Article I, Section 8, of the Constitution of South Carolina, which provides, in part:

‘—the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other —.’

The cases of [Gould v. Barton](#), 256 S.C. 175, 181 S.E.2d 662, as well as [Parker v. Bates](#), 216 S.C. 52, 56 S.E.2d 723, and the cases cited therein, appear to be precisely in point. In [Gould v. Barton](#), the Court held, with respect to a provision similar to that contained in Sections 12 and 14:

‘The power to approve the budget of the Commission carries with it the power to disapprove until the budget conforms to the legislative wish, and thereby places in the legislative delegation control of the administration of the funds of the Commission. Under the principle announced in [Bramlett v. Stringer](#), such portion of [the Act] is unconstitutional and void.’

In [Gunter v. Blanton](#) the Court held, in considering a statute similar in import to Sections 12 and 14:

*2 ‘To authorize them [the legislative delegations] to participate as corporate authorities of the school district, as the Act attempts to do, clearly assigns to them a dual role, in violation of the separation of powers clause of the Constitution.’

I therefore advise that, in my opinion, Sections 12 and 14 are, for the reasons stated, in violation of the Constitution of South Carolina.

Very truly yours,

Daniel R. McLeod
Attorney General

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