1975 WL 28892 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
June 5, 1975

***1** Mr. G. P. Callison
Messrs. Callison & Dorn
Attorneys at Law
505-9 Textile Building
Greenwood, South Carolina 29646

Dear G. P.:
I had your letter of May 9 concerning the above for some period of time but I have not answered it in view of your conclusion that there is no special need for haste.

The local government amendment situation in the Legislature looks, as far as I can determine, as if it may not pass. If that is true, you will probably be faced with the problem for at least another year. Therefore, I am setting forth my thoughts about the matter for such value as you may wish to attach to them.

The County Council Act of 1970 contains provisions which are fairly similar to that contained in many other county council acts. In my opinion, they merely vest in the council the appointive authority which was previously vested, in many instances, in the legislative delegation. Nearly always, an exception is made with respect to constitutional officers, such as magistrates. What you say with respect to a local act, thereby amending a statewide act, is basically correct. I do not think it amends it, except insofar as it makes an exception in it for certain counties, including Greenwood County. The Greenwood County Council Act is special legislation, but it was special legislation of a type which had previously been universally upheld. Since the ratification of the local government amendment in March, 1973, it would not have been upheld, in my view, because it was special legislation. The local government amendment continued all existing forms of government until they are changed by general law (Section 1), and that is what the Legislature is wrestling with at the present time.

Therefore, it seems to me that you have special legislation which forms an exception, in many instances, to statewide Acts. I think that you have some basis for questioning the validity of such exceptions. The case of McElveen v. Stokes, cited under the Forest Fire Protection Act, and referred to in your letter, is in point, but I do not believe that it would necessarily mean that exceptions of this nature are constitutionally defective. McElveen was an entirely different situation, being similar only in that it changed the method of selecting forest fire personnel for one single county. Acts of the nature of the County Council Act for Greenwood County merely substitute the County Council in the place of the Legislative Delegation, and except for that substitution, there is no alteration in the procedure for appointment of forest fire personnel.

I feel that the exceptions, such as those contained in the Greenwood County Council Act, must be presumed valid. I feel that their validity would be sustained if attacked, but I recognize that it is an arguable point. It is a new thought which I have never heard expressed before, although we very frequently encounter applications of these appointive Acts. If the local government implementation should go through the Legislature, it will cause an end to at least some of these problems.

***2** I hope that the foregoing may be of some benefit.

With best wishes,
Cordially,

Daniel R. McLeod
Attorney General

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