

1975 S.C. Op. Atty. Gen. 136 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4058, 1975 WL 22355

Office of the Attorney General

State of South Carolina

Opinion No. 4058

July 25, 1975

*1 Honorable James B. Ellisor

Executive Director

State Election Commission

P. O. Box 5987

Columbia, South Carolina 29250

Dear Mr. Ellisor:

You have requested an opinion as to whether or not the South Carolina General Assembly now has the authority to establish or realign voting precincts throughout the State in light of new Article VIII of the State Constitution, the passage of Act No. 283 of 1975, the 'home rule' legislation, and recent decisions of the State Supreme Court and, if not, what county body can now exercise this authority.

I agree with the conclusion reached by Mr. Thomas E. Foster, Assistant County Attorney for Spartanburg County, in his letter to Mr. James O. Thomas dated June 19, 1975. In that letter, Mr. Foster concluded that since the effective date of the ratification of Article VIII, Section 7 of the State Constitution and the interpretation subsequently placed upon that provision by the State Supreme Court in [Neel v. Shealy](#), 261 S.C. 266, 199 S.E.2d 542 (1973), in [Knight v. Salisbury](#), 262 S.C. 565, 206 S.E.2d 875 (1974), in [Thorne v. Seabrook](#) (Opinion No. 20030, filed June 14, 1975) (concurring opinion of Moss, C.J. and Littlejohn, A.J.) and, most recently, in [Moye v. Caughman](#) (Opinion No. 20064, filed July 16, 1975), the General Assembly can no longer constitutionally enact legislation to establish or realign precinct lines within a county as it did, most probably, unconstitutionally, in 1974 and 1975 vis a vis Spartanburg County. 58 STAT. Act No. 922 at 1986 (1974); Act R406 of 1975.

Accordingly, I agree with Mr. Foster that the respective county boards of voter registration presently have the sole authority to define and realign voting precinct lines pursuant to Section 23-153.1, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended. Section 23-153.1 would also, in my opinion, empower county boards of voter registration to create new voting precincts and abolish old ones in their defining and realigning of voting precinct lines.

The foregoing opinion will be altered somewhat at the effective date of Act No. 283 of 1975, the 'home rule' legislation. Part II, Article 7, Section 47-93 of that Act provides in part:

Each municipal governing body shall by ordinance establish municipal ward and precinct lines . . .

While this provision will most probably have the effect of impliedly repealing the present authority of county boards of voter registration to establish precinct lines as they relate to municipal elections, any municipal governing body which acts pursuant to the authority granted by 47-93 must also, in my opinion, continue to comply with the requirements of Sections 23-112 and 23-113 of the Code. As to the provisions of Act No. 283 relating to counties, Part I, Section 3 of that Act provides in part:

All operations, agencies and offices of county government, appropriations and laws related thereto in effect on the date the change in form becomes effective shall remain in full force and effect until otherwise implemented by ordinance of the council pursuant to this act. Provided, however, that county councils shall not enact ordinances in conflict with existing

law relating to their respective counties and all such laws shall remain in full force and effect until repealed by the General Assembly or until January 1, 1980, whichever time is sooner, . . .

*2 The language of this provision indicates to me that county boards of voter registration will continue to possess the power granted to them by Section 23–153.1, as modified by Section 47–93 of Act No. 283 as hereinabove outlined, until and unless that Section is repealed by the General Assembly.

With kindest regards,

C. Tolbert Goolsby, Jr.

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