

1975 S.C. Op. Atty. Gen. 166 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4087, 1975 WL 22383

Office of the Attorney General

State of South Carolina

Opinion No. 4087

August 20, 1975

*1 Senator Thomas E. Smith, Jr.
100 Walnut Street
Pamplico, South Carolina 29583

Dear Senator Smith:

You have requested an opinion as to whether or not Act No. 27 of 1975 is the type of legislation contemplated by that portion of Section 14–3714 of Act No. 283 of 1975, the ‘home rule’ legislation, which reads:

... Each council shall have such appointive powers with regard to existing boards and commissions as may be authorized by the General Assembly except as otherwise provided for by the general law and the Constitution, . . .

Act No. 27 of 1975 provides as follows:

Section 9A—Effective July 1, 1975, all appointive powers and powers of recommendation for appointments vested in the [Florence] county legislative delegation for county officials, boards, committees and commissions not otherwise provided for by the general law or the Constitution of this State are devolved upon the county council.

In my opinion, the above-quoted language of Section 14–3714 of the home rule legislation means that in order for the Florence County Council to exercise appointive powers prior to January 1, 1980, as to those existing county boards and commissions whose members are not appointed pursuant to general law or the Constitution, the General Assembly must so authorize it; after January 1, 1980, the Act states that the Council is to provide by ordinance for the appointment of all county boards and commissions whose appointment is not provided for by the general law or the Constitution.

Act No. 27 of 1975 does authorize the Florence County Council to exercise, as of July 1, 1975, appointive powers and powers of recommendation for appointments as to county boards and commissions whose appointments are not otherwise provided for by general law or the Constitution and, in so doing, represents legislation of the type contemplated by the aforementioned provision of Section 14–3714.

Finally, inasmuch as Act No. 27 of 1975 has been enacted, this office must presume the Act to be constitutional until and unless a court of law declares otherwise. If, however, an action were brought pursuant to the Uniform Declaratory Judgments Act [§§ 10–2001 *et seq.* of the Code], the Act might be declared unconstitutional as violative of Article VIII, Section 7 of the State Constitution. *See, e.g., Knight v. Salisbury*, 262 S.C. 565, 206 S.E.2d 875 (1974); *Kleckley v. Pulliam*, — S.C. —, — S.E.2d — (Opinion No. 20075, filed August 5, 1975). On the other hand, the Act would probably be sustained under the provisions of Article III, Section 34, subdivision x of the Constitution and, especially so, in view of the fact that Act No. 27 of 1975 is consistent with the spirit of Article VIII, *i.e.*, to place the functioning of local government at the local level. Indeed, the foregoing interpretation permits the achievement at an earlier date of the result which is intended to be reached after January 1, 1980. That result is the transfer to the county governing body of appointive powers relating to county boards and commissions.

With kindest regards,

*2 Karen LeCraft Henderson

Assistant Attorney General

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