

1975 S.C. Op. Att. Gen. 169 (S.C.A.G.), 1975 S.C. Op. Att. Gen. No. 4093, 1975 WL 22389

Office of the Attorney General

State of South Carolina

Opinion No. 4093

August 22, 1975

***1 County Council has no authority to amend the requirements of a statewide act.**

Beaufort County Attorney

The question here presented may more appropriately be treated as one of whether the County Council has the authority to amend a general law or whether the General Assembly may delegate to the Council authority that is constitutionally prohibited to the General Assembly.

In the recent case of *Thorne v. Seabrook*, 264 S. C. 503, 216 S. E. 2d 177, the Supreme Court declared unconstitutional an act of the General Assembly that subjected to taxation improvements to realty in Charleston County for the proportion of the year in which the same was completed. The basis of the declaration was that the act was special legislation in that a state statute applied a different standard for the other forty-five counties. The court there stated:

‘In principle, the instant case cannot, we think, be distinguished from the cases of *Salley v. McCoy*, 182 S. C. 249, 189 S. E. 196, and *Webster v. Williams*, 183 S. C. 368, 191 S. E. 51. In *Salley* the court held unconstitutional an act applicable only to Orangeburg County, which contrary to the general law on the subject sought to deprive the Treasurer of Orangeburg County of fees for the issuance of tax executions to which he was entitled under the general law. In *Webster*, another Orangeburg County case, the court held unconstitutional an act which provided, contrary to the general law on the subject, an additional penalty for late payment of taxes.’

Any act of the General Assembly applying a different standard for Beaufort County than that set forth in the 1971 act would therefore be invalid. The General Assembly, having no authority to constitutionally enact any exceptions to the 1971 act, therefore, had no authority to delegate such to the Council.

‘* * * the Legislature cannot delegate powers, which are *strictly and exclusively* legislative, but that it may delegate to others powers which it may rightfully exercise itself. * * *. The rule is well established that a statute does not delegate legislative power, so long as it is complete in itself, when it has passed the Legislature and has been approved by the Governor, *even though it is left to some local body whether and when it shall go into operation.*’ *State v. Moorer*, 152 S. C. 455, 150 S. E. 269.

It is thus apparent that the Council is without authority to amend or modify the State statute. The State statute is complete in its terms and provisions.

No consideration has been given herein to powers that are or may be conferred under Act 283, the Home Rule, as the same would have no effect on the powers of the Council at this time. Reference, however, to Sections 14-3703 and 14-3792 of the Home Rule Act discloses express language that such power is not conferred.

It is the opinion of this office that the Council may adopt the 1971 act as approved by the General Assembly and that the Council is without authority to modify or amend the same.

***2** Joe L. Allen, Jr.
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