

1975 WL 29210 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 26, 1975

\*1 'The local government amendment', enacted June 25, 1975, (Act No. 283 of 1975) is not applicable to McCormick since McCormick has not adopted a new form of government pursuant thereto.

The Town Council does not have the authority to call for an advisory referendum to act upon a Petition for the abolition of the Commissioners of Public Works since they have not been delegated that authority by the General Assembly.

Act No. 277 of 1963, authorizing, inter alia, the Town Council of the Town of McCormick to abolish the offices of Commissioners of Public Works is apparently violative of Article 3, Section 34 of the Constitution which prohibits the enacting of special legislation.

TO: City Attorney  
Town of McCormick, South Carolina

QUESTIONS INVOLVED:

Are the provisions of the 'local government amendment' (Act No. 283 of 1975) applicable to the Town of McCormick?

What is the authority and the effect of a Petition signed by numerous citizens of the Town of McCormick asking for the abolition of the Commissioners of Public Works?

Does the Town Council of McCormick have the authority to abolish the Commissioners of Public Works?

AUTHORITIES INVOLVED:

Constitution—Article I, Section 2; Article III, Section 34; Article VII, Section 11; Article VIII, Section 7; Article VIII, Section 10.

Acts—Act No. 277 of 1963; Act No. 283 of 1975.

Cases—[Neel v. Shealy](#), 261 SC 266, 199 SE2d 542 (1973); [Ruggles v. Padgett](#), 240 SC 484, 126 SE2d 553 (1962)

Miscellaneous—81 CJS, States.

DISCUSSION:

On September 9, 1975, the Town Council of the Town of McCormick, South Carolina, received a Petition signed by numerous citizens of McCormick asking for the abolition of the Commissioners of Public Works and the devolution of their duties upon the Council. Article I, Section 2 of the Constitution of South Carolina (1895) (as amended) assures 'the right of the people peaceably to assembly and to partition the government and any department thereof for a redress of grievances.'

Section 47-200 of Act No. 283 (the local government amendment) provides:

The electors of a municipality may propose any ordinance, except an ordinance appropriating money or authorizing the levy of taxes. . . .

Article I, Section 2 of the Constitution only assures the right of the people to petition for redress of grievances. It does not require any political body of this state to submit such Petition to the qualified electors an advisory referendum. Section 47-220 is not applicable to the Town of McCormick because the provisions of the local government amendment to not become effective until particular municipality, in this case McCormick, chooses a new form of municipal government. See: Section 7 of Act No. 283 of 1975. Assuming arguendo that the provisions of Act No. 283 of 1975 are applicable to McCormick, the Council would be powerless thereunder to abolish the Commissioners of Public Works because it provides that '[a]ll provisions of Chapter 4 [Municipal Public Works], Title 59 of the 1962 Code and all other laws pertaining thereto shall remain in full force and effect.' Act No. 283, Section 7 (1975).

\*2 As to the effect of the Petition, it is the opinion of this Office that the Town Council of McCormick has no authority to provide for funds of an advisory referendum to consider said Petition. A political subdivision of a state has only the authority which it has been expressly delegated or delegated by necessary implication and no powers beyond those granted by express provision or necessary implications. See: 81 CJS, States, Section 58 at 977-978. The above premise is more fully explained in the opinion of Karen LeCraft Henderson, Assistant Attorney General, a copy of which is enclosed. This Office has been unable to find any such grant of authority to the Town Council of McCormick to call for advisory election. Therefore, it is the opinion of this Office that the Council may not call for and does not have the authority to expend monies to finance such a referendum.

Under Act No. 277 (1973), the Town Council has the apparent authority to abolish the offices of Commissioners of Public Works and to assume their duties. However, as appears below, this Office questions the constitutionality of Act No. 277 (1963). Article III, Section 34(IX) provides: 'In all other cases, where a general law can be made applicable, no special law shall be enacted . . . .' Article VII, Section 11 which authorizes the Legislature to make special provisions for municipal government does not save Act No. 277 (1963) because the Supreme Court has held that this section does not apply to incorporated municipalities [Ruggles v. Padgett, 240 S.C. 494, 508-509, 126 S.E.2d 553 (1962)]. Also, Article VIII, Section 10 is not applicable to Act No. 277 (1963) since the Court in Neel v. Shealy, 261 S.C. 266, 199 S.E.2d 542 (1973), found that Article VIII, Section 7 which prohibits special legislation for counties was intended to apply from the date of ratification of new Article VIII, thenceforward, and the conclusion is, therefore, inescapable that Article VIII, Section 10 is also not retroactive.

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