1975 WL 29338 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
December 29, 1975

***1** The Honorable J. Verne Smith
Senator
Greenville and Laurens Counties
Box 528
Greer, South Carolina 29651

Dear Senator Smith:
In response to your letter concerning Act No. 270 of 1975, whose constitutionality is presently being challenged in an action entitled McPherson, et al. v. Abrams, et al., I am enclosing an opinion relating to a special act for Florence County. The Florence County Act has not been challenged to my knowledge but it is the one which I discussed with your son on the telephone.

As far as the pending litigation is concerned, no hearing has yet been set although the plaintiffs have filed a motion for summary judgment which may well decide the entire matter. Our Office has not yet determined the position we shall take as to the constitutionality of Act No. 270 but I shall let you know when we make that determination.

The Columbia Airport case, Kleckley v. Pulliam, et al., Opinion No. 20075 (filed August 5, 1975), involved an act relating to the Richland-Lexington Airport District which encompasses more than one county. The Supreme Court held that because the services and functions performed by the District benefit more than one or even two counties, its functioning should remain in the control of the General Assembly, saying:
The record here clearly establishes that the function of this airport is not peculiar to a single county or counties. To a large segment of the population of this State, the maintenance of the airport is as important as the existence of an interstate highway. It, therefore, follows that since the governmental purpose under the Act establishing the District is not one peculiar to a county, the power of the General Assembly to legislate for this purpose continues, despite Article VIII, Section 7.

I had originally thought that the following language in the opinion might have limited the scope of Section 7 of Article VIII which, in part, proscribes laws for a specific county:
The concluding sentence of Section 7 provides that 'No laws for a specific county shall be enacted and no county shall be exempted from the general laws or laws applicable to the selected alternative form of government.' Read alone, this prohibition against the enactment of laws for a specific county could be given such a broad interpretation that it would prohibit the enactment of a law establishing a state park or a branch of a state college in a designated county. The prohibition was not intended to create an area in which no laws can be enacted. Rather, the prohibition only means that no law may be passed relating to a specific county which relates to those powers, duties, functions and responsibilities, which under the mandated systems of government, are set aside for counties.

The above-underlined language omits the words 'structure' and 'organization' and, for that reason, I had inferred that the Supreme Court might be indicating by that omission that an act relating to the structure and organization of a specific county would not violate Section 7. Inasmuch as Section 7 itself contains the words 'structure' and 'organization,' in its requirement that laws relating thereto must be general laws, however, I think that my original opinion might have

interpreted the effect of the Kleckley language too broadly. The question, of course, needs to be resolved by the Supreme Court and, perhaps, the action challenging Act No. 270 will be the vehicle by which that determination will be made.

***2** Best wishes for the year 1976.
With kind personal regards,

Karen LeCraft Henderson
Assistant Attorney General

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