

1974 WL 27656 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 4, 1974

*1 The Honorable William H. Ballenger
State Senator
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Walhalla, South Carolina 29691

The Honorable Cecil T. Sandifer
Member
House of Representatives
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Westminster, South Carolina 29693

The Honorable Harold B. King
Member
House of Representatives
Route 2

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Gentlemen:

Thank you for your letter of February 22, 1974, inquiring as to the validity of the financing of the Commissions set forth below by ordinary tax money.

It must be noted initially that the meaning to be given to the constitutional restrictions on the powers of counties is uncertain at the present time due to the ratification of the local government amendment (Article VIII) in March of 1973. It is my opinion that the adoption of the new amendment in 1973 did not have the effect of repealing the restrictions on counties set forth in Article X, Section 6, of the Constitution of 1895. However, a Circuit Judge has declared to the contrary, holding that counties are now unrestricted by the provisions of Article X, Section 6. His order is now on appeal before the Supreme Court, and until that case is decided or until some decision is made by the Supreme Court of this State, the question as to what powers a county can exercise is subject to doubt.

As stated, I have heretofore reached the conclusion that Article X, Section 6, is still in the Constitution, and that its restrictions are, therefore, still binding on the counties. Until the Supreme Court has spoken on the subject, I will adhere to that advice, while pointing out that a different conclusion has been reached in a case now on appeal. Therefore, the counties, in my view, are now limited to the exercise of the following powers which have been strictly construed by the Supreme Court of South Carolina in the past:
educational purposes;

to build and repair public roads, buildings and bridges;

to maintain and support prisoners;

pay jurors and county officers;

litigation;

quarantine;

court expenses;

support paupers;

pay past indebtedness;

construct and maintain an airport or landing strip; and

for ordinary county purposes.

With the foregoing comments in mind, I, therefore, submit the following views on the matters you have requested:

Board of Rural Fire Control created by Act No. 288 of 1961. It is my opinion that the validity of appropriations for the purposes for which the Board of Rural Fire Control exists is subject to extreme doubt. The basic function of the Board is reflected in its title. Whether fire control as a county function was intended to be included within the powers given to counties by the Constitution of 1895 is, in my opinion, a most doubtful issue. Applying the rule of strict construction which the Supreme Court of South Carolina has given to the pertinent section of the Constitution of 1895, it is my opinion that it is most probable that this appropriation is invalid. This conclusion must be considered in the light of the conclusions set forth above.

***2** Tri-County Technical Education Center created by Act No. 905 of 1962. This Act provides for the creation of a Technical Education Center to advance a program of adult and high school pre-employment training. It is my opinion that an appropriation for this purpose is valid in accordance with the authority given by Article X, Section 6, of the Constitution, which authorizes counties to levy taxes for educational purposes.

Oconee County Civil Defense created by Act No. 118 of 1963. Probably constitutional, but very uncertain.

Oconee County Library Commission created by Act No. 366 of 1963. In my opinion, an appropriation for the support of this agency is valid as being for an educational purpose.

Pendleton District Historical Commission created by Act No. 794 of 1966, amended by Act No. 2183. Probably constitutional. [Powell v. Thomas](#), 214 S.C. 376, 52 S.E.2d 782.

Oconee County Planning Commission created by Act No. 900 of 1966. Probably unconstitutional. It is entirely possible that counties may be authorized to plan for activities which they are constitutionally authorized to undertake, but it is highly doubtful if they can plan for activities which they cannot validly perform. A planning commission would be authorized if the procedure authorized in Article VII, Section 15, of the Constitution is followed (Regional Councils of Government).

Oconee County Arts Commission created by Act No. 1832 of 1967. It is my opinion that appropriations for this agency are valid as serving an educational purpose.

Oconee County Commission for Parks, Recreation and Tourism created by Act No. 1245 of 1968. It is my opinion that appropriations for this purpose are not valid. The Supreme Court of South Carolina has declared that a recreation function with the use of county funds is not permitted under the provisions of Article X, Section 6. [Leonard v. Talbert](#), 225 S.C. 559, 83 S.E.2d 201.

Oconee County Aeronautics Commission created by Act No. 987 of 1968. It is my opinion that an appropriation for this purpose is valid. The construction and maintenance of an airport is specifically permitted by the provisions of an amendment to Article X, Section 6, of the Constitution.

Very truly yours,

Daniel R. McLeod
Attorney General

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