

1974 WL 27735 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 1, 1974

\*1 Honorable Nyman Rubin  
Senator  
Richland County  
P. O. Box 4089  
Columbia, South Carolina 29240

Dear Senator Rubin:

Your letter of April 11, 1974, encloses a copy of a city-county merger proposal to be put on the ballot in the November election. You request the opinion of this office as to whether you would presently be empowered under Article 8 of the Constitution of South Carolina to proceed with a merger proposal irrespective of any legislation that might emanate from the Local Government Study Committee.

The city-county merger proposal submitted by you contemplates the submission to the people for a vote upon the question of whether a consolidated unit of government shall be adopted for Richland County with the powers and functions as set out in the charter therefor as prescribed in the Act authorizing the submission of such question.

The proposal, in its preamble, refers to the fact that the Richland County Council has adopted a resolution requesting that the legislative Delegation proceed with the necessary enabling legislation to have the city-county merger proposal (Act) placed on the ballot in November, 1974. The request of the Richland County Council is submitted in compliance with the provisions of Article 8, Section 12 of the Constitution.

This constitutional provision provides in part as follows:

Notwithstanding any other provisions of this Constitution, any county may consolidate with the municipalities and other political subdivisions within its limits into a single unit of government, which shall be known as a consolidated political subdivision.

The General Assembly shall provide by law for a referendum on such consolidations and for procedures for the framing of a charter for the new political subdivision . . .

It is my opinion that Section 12 of Article 8 is not a self executing provision, and in that no such legislation has been enacted at the present time, the provisions of Section 12 are not now effective. I have been informed by a member of the Joint Committee considering the submission of implementing legislation with respect to Article 8 that a draft of a proposal to execute the mandate of Section 12 is imminent of submission to the General Assembly. Such Act, in my opinion, is necessary to carry out the mandate referred to in the second paragraph of Section 12:

The General Assembly shall provide by law for a referendum on such consolidations and for procedures for the framing of a charter for the new political subdivision.

Until such legislation is enacted, it is my opinion that the provisions of the section are inoperative.

It is my opinion also that such legislation must be general in nature and not directed at a procedure for one single county. I reached this conclusion in view of the continued effectiveness of Article 3, Section 34(IX) of the Constitution of South Carolina which contains the general prohibition against special legislation. While a separate treatment for individual forms of county government has been heretofore found to be not violative of this constitutional provision ([Gaud v. Walker](#), 214 S.C. 451, 53 S.E.2d 316), the referendum and charter-framing procedures are of a different character and clearly susceptible of general legislation. This is indicated by the fact that draft proposals of such general legislation are now in existence.

\*2 The phrase in Section 12 providing 'Notwithstanding any other provisions of this Constitution', must be read as relating only to the provisions of Article 8. The use of the word 'Constitution' was incorporated in the initial draft of 1968 at which time it was contemplated that the new Constitution should be submitted as a single document, but there was no substitution of the word 'article' in lieu of the word 'Constitution.'

It is my opinion that the proposal cannot now be submitted.

Very truly yours,

Daniel R. McLeod  
Attorney General

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