

1974 S.C. Op. Atty. Gen. 246 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3837, 1974 WL 21341

Office of the Attorney General

State of South Carolina

Opinion No. 3837

August 6, 1974

***1 RE: Disaster Planning by County and Municipal Government.**

Honorable Fred C. Craft

Director

Disaster Preparedness Agency

Rutledge Building—1429 Senate Street

Columbia, S. C. 29201

Dear General Craft:

By letter dated July 10, 1974, you inquire whether county and municipal governments have legal authority to plan for and establish disaster preparedness programs at a local level. Of particular concern is the legal affect of the recently approved 'home rule' constitutional amendment.

The 'home rule' provisions of the South Carolina Constitution became effective upon ratification by the General Assembly on March 7, 1973. These provisions are embodied in Article VIII of the Constitution and represent a serious effort on the part of the electorate and the General Assembly to restore control of local government to the local level. See Knight, et al v. Salisbury, et al., Supreme Court Opn. No. 19842 (filed June 17, 1974).

The State Civil Defense and Disaster Control Law, Sections 44–311 through 44–318, S. C. Code of Laws, as amended, was approved by the Governor on April 6, 1973, subsequent to ratification of the 'home rule' provisions. This act is consonant with the pertinent 'home rule' provisions which specify that the General Assembly may provide by general law only for the 'structure, organization, powers, duties, functions and responsibilities of counties and municipalities. See S. C. Const. art VIII, §§ 7 & 9.

Under S. C. Code Section 44–317, (Section 7, Act No. 128, 1973 Acts and Joint Resolutions) county and municipal governments are expressly made responsible for 'organizing, planning and otherwise preparing' for possible disasters. In the opinion of this office, counties and municipalities not only have the clear legal authority to follow these statutory directives, but, as noted in my letter dated December 14, 1973, can be compelled by court order to implement some type of disaster preparedness program. Such disaster preparedness planning does not require further approval by the General Assembly and, in fact, the General Assembly may not pass such local legislation. See Knight, supra. This planning is to be instituted by county and municipal officials, in coordination both with one another and with the State Disaster Preparedness Agency. Model ordinances promulgated by your office will certainly be helpful. However, local governing bodies have discretionary authority to tailor programs to fit their local needs and resources and may be as specific and detailed in their planning as they feel is necessary to insure adequate disaster preparedness.

If there are further questions, please correspond. With best wishes, I am

Sincerely,

John B. Grimball

Assistant Attorney General

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