

1973 WL 26605 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 9, 1973

*1 Honorable Richard W. Riley
Senator
Greenville County
Box 10084
Greenville, South Carolina 29603

Dear Senator Riley:

Several inquiries have been received by me concerning the application of Section 13 of Article 8, which section is contained in the local government amendment to the Constitution of this State, approved by the voters at the general election in November 1972 and now pending before the General Assembly for ratification. Inquiry is made with specific reference to any effect which the ratification of this article would have upon Section 15 of Article 7 of the State Constitution which was ratified by the General Assembly in 1971.

The two provisions provide, in basis parts, as follows:

‘Article 7, Section 15. Regional Councils of Government.

The General Assembly may authorize the governing body of a county or a municipality—to create organizations to study and make recommendations on matters affecting the general welfare—.

‘The Legislature may authorize governments to provide financial support for facilities and services required to implement recommendations of such organizations which are accepted and approved by the governing bodies—.’

This constitutional provision is clearly non-self-executing and requires prior legislative consent before planning procedures may be undertaken, as well as require legislative authority before implementation of plans which are adopted may be undertaken. In vesting powers in the counties to undertake studies and to implement recommendations which are the product of such studies, the Legislature is not limited by the provisions of Article 10, Section 6 of the Constitution, which enumerates, in restricted fashion, the powers of the various counties in this State. Instead, the General Assembly is given constitutional authority to vest in the counties a broad range of powers which can best be characterized as inclusive of those matters which affect the general welfare.

Section 13 of Article 7 of the local government amendment provides, in pertinent part:

‘Any county, incorporated municipality, or other political subdivision, may agree with the State or any other political subdivision for the joint administration of any function and exercise of powers and the sharing of the costs thereof.

‘Anything in this Constitution shall be construed to prohibit the State or any of its counties, incorporated municipality, or other political subdivisions, from agreeing to share the lawful costs, responsibility, and administration of functions with any one or more governments, whether within or without this State.’

This new constitutional provision appears clearly to be self-executing and therefore requires no legislative implementation to make its provisions effective, except as hereinafter noted. The recommendation of the committee to make a study of the South Carolina Constitution of 1895 submitted this proposed amendment so as to provide that ‘any county, incorporated municipality,

or other political subdivision may, to the extent permitted by law, agree with the State or any other political subdivision—.’ Study Committee Report, p. 90. In the course of passage, however, the House amended by striking out the underlined words of the quoted provision, thus evidencing a clear intent that prior legislative authority would not be required for political subdivisions to utilize the powers granted by the section.

*2 Therefore, the constitutional provision contemplates that political subdivisions may agree among themselves for the joint administration and costs ‘of any function.’ The Quoted phrase, in the opinion of this Office, means any function which the various participating political subdivisions are authorized by law to undertake. This conclusion is supported by consideration of the history of the proposed amendment. See Working Paper No. 11, pp. 40 and 41, and the Minutes of the Constitutional Study Committee, p. 106, dated January 19, 1968. These documents reflect that Section 13 of Article 8 was based on a Maryland constitutional provision which Working Paper No. 11 states does contain a simpler provision of a Michigan constitutional provision. The latter constitutional provision is referred to as an example of a constitutional provision authorizing such agreements among political subdivisions as was sought to be devised for the consideration of the Constitutional Study Committee. The Michigan provision provides, in part, that political subdivisions may ‘—enter into contractual undertakings or agreements with one another—for the joint administration of any of the functions or powers which each would have the power to perform separately—.’

Additionally, at the cited page of the matters referred to above, the following comments appear:

‘Mr. Stoudemire: Page 41. The concept of Intergovernmental Agreements. Dr. Bain has given you several choices, but I think the heart of the thing is the Maryland draft on page 41.

‘Mr. Sinkler: You know, that really doesn't change too much some very good decisions that we have got in this State. Going way back as far as the teens where they let the Town of Edgefield issue bonds to help out the school district. We've seen it where Charleston County bought the site for the Medical College.’

The decisions referred to by Mr. Sinkler undoubtedly are the decisions of the Supreme Court of South Carolina in ?? in which the principle was clearly recognized that there is no constitutional prohibition to cooperative agreements between political subdivisions whereby they join together in exercising any right which either could perform separately.

I therefore am of opinion that the purposes for which political subdivisions may enter into joint agreements for the administration of ‘any function’ as that term is used in Section 13 of Article 8 means those functions which the political subdivisions may separately perform.

The powers to be vested in the counties will be markedly changed upon ratification of the local government constitutional amendment. Section 7 of this amendment provides:

‘The General Assembly shall provide by general law for the structure, organization, powers, duties, functions, and the responsibilities of counties, including the power to tax different areas at different rates of tax relating to the nature and level of governmental services provided—.’

This provision appears in direct conflict with Article 10, Section 6 of the present Constitution, which provides, in pertinent part, that:

*3 ‘The General Assembly shall not have power to authorize any county or township to levy a tax or issue bonds for any purpose except for educational purposes, etc.’

The resulting that the local government amendment will have the effect of superseding the present Article 10, Section 6 of the Constitution for the reason that the Authority to vest counties with various powers is clearly ?? to the Legislature by Section 7 of the local government amendment. See, comment Sec. 6 page 87 Study Committee Report.

Therefore, when counties exercise the authority given them under Section 13 of Article 8, to engage in the joint administration of 'any function,' it is necessary to determine what powers are vested in the counties. This can be determined only by reference to the action which the General Assembly may have taken under the provisions of Section 7 of Article 8. By The ratification of the local government amendment, having the effect of repealing the applicable portions of Article 10, Section 6, there would no longer appear to be any constitutional restrictions on the powers of counties, and the only limitation on such powers would be such as are designated in existing statutes. Approximately one-half of the counties now have self-governing authority which is generally a reflection of the powers enumerated in Article 10, Section 6. The remaining counties possess whatever authority is vested in them by the general law. Eventually, The Powers of the counties must be Fixt By General Law Pursuant to Art. 8 Sec.

I conclude therefore that the effect of the adoption of the ratification of the local government amendment will be to repeal the portions of Article 10, Section 6, relating to county powers and to vest in counties and other political subdivisions the authority to jointly administer the functions which they may separately perform. These powers are those which are vested in the counties by specific or general law and will be subject to delineation by the Legislature in accordance with the mandate of Section 7 of Article 8.

The new local government amendment does not, in my opinion, affect Article 7, Section 15, relating to regional councils of government. The older provision is not self-executing, in contrast to the provisions of the latter. (See comment, p. 91, Study Committee Report.) Additionally, specific authority for planning and implementation may be granted by the General Assembly in specific or non-specific areas, whereas under Article 8, Section 13, joint administration for any authorized functions may be undertaken without prior legislative authorization.

The regional councils of government formed under Article 7, Section 15, continue to exist following the ratification of the local government amendment and are unaffected thereby. On the other hand, a similar type of organization which is characterized also as regional councils of government may be created under Section 13 of Article 8 without prior legislative authority and with an unrestricted range of powers except as the General Assembly may have otherwise provided by general law pursuant to the provisions of Section 7 of Article 8.

Very truly yours,

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