

1973 S.C. Op. Atty. Gen. 73 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3485, 1973 WL 20949

Office of the Attorney General

State of South Carolina

Opinion No. 3485

March 8, 1973

**\*1** Proposed legislation which would require that all appropriations made by the Georgetown County Council be approved by the County Legislative Delegation before any levy on taxable property could be made would be violative of the provisions of Art. I, Section 8 of the South Carolina Constitution providing for the separation of powers between the Legislative, Executive, and Judicial branches of our State Government.

TO: Senator

Georgetown County

You have requested that this Office review the below quoted proposed amendment to Act No. 1527, 1972 Acts and Joint Resolutions of the General Assembly of the State of South Carolina to determine whether the same would offend our State Constitution or existing laws. Act No. 1527, to which your proposal relates, reconstituted the governing body of Georgetown County as the Georgetown County Council and amended Section 14–2004, Code of Laws of South Carolina, (1962), as amended, so as to increase the powers and duties of that governing body. Section 14–2004 as now amended bestows upon the Georgetown County Council the power, among others, ‘To make appropriations and to levy taxes therefor . . .’

Your proposed amendment, as I understand it, would add an additional proviso, in substance as follows:

‘Further provided, however, that the Georgetown County Auditor shall not levy upon the taxable property of Georgetown County until there has been filed in the Auditor's Office written approval of said County Council's appropriations by a majority of the resident members of the Georgetown County Delegation including the Senator if any.’

As you are no doubt aware, Article I, Section 8, of the Constitution of this State provides:

‘In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one said department shall assume or discharge the duties of any other.’

Your proposed amendment to Act No. 1527 would, in effect constitute the Georgetown County Legislative Delegation as a committee of the State Legislature to approve or disapprove County Council's budgetary appropriations, thus granting, in substance, a veto power. Such proposed legislation would, in the opinion of this office, be authorizing the Georgetown County Legislative Delegation to exercise executive or administrative powers in violation of Article I, Section 8 of the Constitution, above quoted.

This Office has previously considered other legislation which subjected various county departmental budgets to the approval of the legislative delegation involved and likewise found the same to be unconstitutional. See Opinion No. 1791, 1965 Ops. Att' Gen. p. 27 (relating to the fixing of salaries, expenses, allowances and number of county policemen by the Chester County Police Commission in conjunction with the county legislative delegation.); Op. No. 2047, 1966 Ops. Att'y Gen., p. 128 (relating to provisions of the Cherokee County Supply Act which subjected the entire budget of the county health department to the approval of the county legislative delegation); Op. No. 3141, 1971 Ops. Att'y Gen., p. 96 (relating to Charleston County Legislative Delegations required approval of the budgets of various public service districts, parks and playground commissions)

\*2 Our position in these matters is, we believe, fully sustained by the Supreme Court's decisions in [Branlette v. Stringer](#), 186 S.C. 134, 196 S.E. 257 (1937); [Gould v. Barton](#), 256 S.C. 175, 181 S.E.2d 662 (1971); and [Gunter v. Blanton](#), — S.C. —, 1922 S.E.2d 473 (Dec'd. Oct. 31, 1972).

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