

1973 S.C. Op. Att. Gen. 94 (S.C.A.G.), 1973 S.C. Op. Att. Gen. No. 3498, 1973 WL 20959

Office of the Attorney General

State of South Carolina

Opinion No. 3498

March 27, 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 basic 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 participating 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 authorizing the creation of Regional Councils of Government is clearly non-self-executing and requires prior legislative consent before planning procedures may be undertaken, as well as 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 8 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.

‘Nothing 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 the State.’

This new constitutional provision relating also to what is styled ‘Regional Councils of Government,’ appears clearly to be self-executing and therefore requires no legislative implementation to make its provisions effective. The recommendations of the Committee to Make a Study of the South Carolina Constitution of 1896 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, without prior legislative authority, 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 contains a simpler version of a Michigan constitutional provision. The latter provision is referred to as an example of a constitutional provision authorizing such agreements among political subdivisions as was sought to be devised by 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 [Smith v. Robertson](#), 210 S.C. 99, 41 S.E.2d 631, and [Allen v. Adams](#), 66 S.C. 344, 44 S.F. 938, 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 rights which each 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. This is nothing more nor less than a constitutional recognition of what the Supreme Court of this State has already stated is constitutionally acceptable. The only additional authority granted by Section 13 of Article 8 appears to be the right of political subdivisions within this State to enter into cooperative agreements with political subdivisions of other states.

The effect of the foregoing conclusions is that Regional Councils of Government established under the preexisting Section 15 of Article 7 are unaffected by the ratification of the new Article 8 with specific reference to Section 13 thereof. Each constitutional provision grants authority to create Regional Councils of Government, with such Councils created under Article 7 being authorized to receive almost unlimited powers from the Legislature, whereas those Councils created under the new Article 8 do not require prior legislative authorization, but may engage only in certain designated functions. It is necessary then to determine, with respect to counties, the functions which Regional Councils of Government created under Section 13 of Article 8 may undertake. Article 10, Section 6, provides, in 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.——.’

Section 7 of Article 8 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 taxation related to the nature and level of governmental services provided. Alternate forms of government, not to exceed five, shall be established. No laws for a specific county shall be enacted and no county shall be exempted from the general laws or laws applicable to the selected alternative form of government.’

These two provisions initially appear to be in conflict, but I am convinced that they must be read together and effect given to each, if this can reasonably be done. A reasonable construction of both constitutional provisions appears to be that the General Assembly has not, by the ratification of Article 8, vitiated the restrictions of Article 10, Section 6. Instead, the intent of Section 7 of Article 8 appears to be to establish a basic constitutional means of achieving a more uniform system of county governmental organization which has not heretofore been the subject of constitutional mandate. See Comment, § G. p. 89, Committee Study Report.

So construed, the General Assembly, while it is now mandated by the provisions of Section 7, Article 8, to provide by general law for the structure, organization, powers, duties, functions, and responsibilities of counties, is still limited by the provisions of Section 6 of Article 10, and may only vest counties with the powers enumerated in the latter constitutional provision

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. Counties may enter into Regional Councils of Government under the provisions of Article 8, Section 7, without prior legislative approval, but may only exercise, or be vested with, these powers authorized under the provisions of Article 10, Section 6. Two forms of Regional Councils of Government are thus provided for. One of these forms depends upon legislative approval but may be vested with an almost unlimited range of powers by the Legislature. The other requires no prior legislative authorization but counties participating therein may only undertake the exercise of powers authorized by Article 10, Section 6 of the Constitution. It is unfortunate that each is denominated a Regional Council of Government.

Article 10, Section 6, identifies certain powers that may be granted to counties and includes therein the phrase ‘and ordinary county purposes.’ The adoption of the local government amendment authorizes counties, upon a majority vote, to: ‘acquire by initial construction or purchase and may operate water, sewer, transportation, or other public utility systems and plants other than gas end electric—.’ Section 17 of the local government amendment requires that it be literally construed in favor of all laws concernings local government and further provides that the powers granted in the local government amendment ‘shall include those fairly implied and not prohibited by this Constitution.’

*4 It is entirely possible that, with the unrepealed provisions of Article 10, Section 6, and with the new authority granted by the local government amendment, the courts would adopt a more liberal view toward the treatment of ‘ordinary county purposes’ than has heretofore prevailed. This seems the strongest basis upon which the counties may hope to scquire greater powers than have heretofore been granted to them under the strictly-construed provisions of Article 10, Section 6.

Very truly yours,

Daniel R. McLeod
Attorney General

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