1973 S.C. Op. Atty. Gen. 165 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3537, 1973 WL 20996

Office of the Attorney General

State of South Carolina
Opinion No. 3537
June 5, 1973

***1 Re: Calendar H–1997 Georgetown County Council**

The Honorable William Doar
State Senator
Post Office Drawer 418
Georgetown, South Carolina

Dear Senator Doar:
Thank you for your letter of May 24 concerning the above bill which provides as follows:
'(5) To annually prepare a budget for operating the county for the next fiscal year and to present such budget to the county legislative delegation not later than April fifteenth; provided, however, that the Georgetown County Board of Education shall have the sole authority to determine and levy taxes for school purposes.'

You inquire as to the validity of this bill in light of the constitutional amendment pertaining to local government which was ratified on the 7th day of March, 1973.

The effect of the bill would be to remove from the present County Act providing for the powers of the governing body of Georgetown County the power:
'to make appropriations and levy taxes therefor for corporate and educational purposes—.'

The bill would therefore take from the County powers heretofore given it under present law.

Article 8 of the Constitution of South Carolina which was ratified March 7, 1973, contains a number of provisions which are set forth in pertinent part below:
'Section 1. The powers possessed by all counties—at the effective date of this Constitution shall continue until changed in a manner provided by law.'

The Constitutional Study Committee gave the following comment with respect to Section 1 (continuance of existing powers):
'This section permits all local governments to continue under existing laws until changed by the General Assembly. It may make several sessions of the General Assembly to implement the provisions of this Constitution by statute. The authority granted in this section is broad enough for the General Assembly to disallow municipal charter powers, but such action is very unlikely. The Constitution should not prevent such action if such becomes necessary in the future.'

'Section 7. The General Assembly shall provide by general law for the structure, organization, powers, duties, functions, and the responsibilities of counties—.

'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.'

The notation is also made that this section is a 'new provision, but it embraces the thought contained in Section 1, Article 8, of the Constitution of 1895.' (This pertains to the mandatory classification of cities, similar to provisions now incorporated in the local government amendment.)

The comment with respect to Section 7 is as follows:
'The Committee recommends that all counties operate under the general county laws applying to the classes. This will prevent the passage of many local and special laws. Each county can be given the authority it needs by well-planned general and class laws—.'

***2** The provisions submitted by the Constitutional Study Committee were modified by the General Assembly, but the comments of the Study Committee as set forth above are pertinent to matters which were left unchanged by the General Assembly.

Initially, the provisions of Section I which provides for the continuance of the powers possessed by all counties 'at the effective date of this Constitution' is considered to mean 'at the effective date of the ratification of this constitutional provision' which, as noted above, was March 7, 1973. This point is not without some concern and will probably be presented for consideration in a case to be submitted to the Supreme Court of South Carolina at its June 1973 term. Consequently, the validity of the conclusion stated herein is subject to the caveat that the matter is now in issue before the courts of this State.

In construing the local government amendment, it is my opinion that consideration must also be given to the provisions of Article 3, Section 34, of the Constitution of 1895, which prohibits the enactment of special laws where general laws can be made applicable. Floyd v. Calvert, 114 S.C. 116, 121, 103 S.E. 3. This consideration is important in determining what variations, if any, may be acceptable from the general classifications of counties.

The local government amendment has not received consideration by the courts, except with respect to the meaning of 'effective date of this Constitution' as used in Section 1 of the local government amendment, and an opinion in that case is momentarily expected at the date hereof. Undoubtedly, the Supreme Court of South Carolina must rule upon the various problems which are apparent in consideration of the local government amendment, as well as others which have been submitted, and no definitive conclusions can be expressed unless and until such decisions have been rendered. This is true, particularly with respect to the problem herein considered. Attention is directed, however, to three cases which are of significance, these being Bank v. Kohn, 52 S.C. 120, 127, Floyd v. Calvert, supra, and DeHay v. County Commissioners, 66 S.C. 229. These cases considered the applicability of related provisions of the Constitution of 1895 and, in my view, particularly DeHay v. County Commissioners, are persuasive of the views herein expressed.

It is my opinion that, as of March 7, 1973, special legislation for counties is prohibited. I reach this conclusion, particularly in view of the requirement that the terms of the Constitution are made mandatory and prohibitory, except where expressly made directory or permissory by its own terms (Article 1, Section 29) and the present Constitution states precisely that 'no laws for a specific county shall be enacted—.' Additionally, Section 1 of the local government amendment provides that the powers possessed by all counties at the effective date of the new Constitution (provision) shall continue until changed in a manner provided by law. The only manner of alteration is provided by Section 7 which requires that, with respect to counties, classification of counties shall be established and 'no laws for a specific county shall be enacted.' The contention that specific laws are not prohibited unless and until classification of counties has been accomplished does not appear tenable in light of the intent of the prohibitory language as expressed by the Committee which drafted it. See DeHay v. County Commissioners, page 237. Unfortunately, the General Assembly has not yet undertaken the task of classifying counties in accordance with the constitutional mandate and this was anticipated by the Committee which drafted the local government amendment. See Comment, Section A, page 85, where it is noted that 'it may take several sessions of the General Assembly to implement the

provisions of this Constitution by statute.' On the other hand, a similar provision with respect to municipal laws was made a part of the Constitution of 1895, but the question did not arise then because the Legislature, at its session in 1896, undertook classification of cities. Carroll v. York, 109 S.C. 1, 95 S.E. 121.

***3** It is my opinion that the local government amendment requires that the status of counties be maintained in the status quo until altered in the manner provided by law. The only manner provided by law is for this to be undertaken by general laws and H–1997 is not such a general law. I conclude that it is most probably unconstitutional.

It may be noted that all special laws for counties may not be prohibited in the future, as the provisions of Article 3, Section 34, relating to the prohibition against special laws generally has been construed to mean that special laws may be enacted in all those instances where a general law cannot be made applicable. DeHay v. County Commissioners, page 237. Therefore, it is most probable that a special law for a county can, in the future, be enacted if a reasonable basis can be demonstrated for making such an exception. As noted, H–1997 does not appear to be such a bill. County supply bills, for example, in those counties which do not presently have the power to make appropriations and levy taxes may, in my opinion, continue to have separate supply bills enacted by the General Assembly, as a general Act in such matters can hardly be framed to fit any except the particular county involved. H–1997, however, does not appear to fit into this category, as there is nothing apparent with respect to Georgetown County which cannot similarly be made applicable to other counties.

While the question is clearly one about which considerable doubt must be expressed, it is my opinion that H–1997 is probably contrary to the provisions of the local government amendment.
Very truly yours,

Daniel R. McLeod
Attorney General

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