

1973 WL 26778 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 18, 1973

***1 Re: Senate Bill S-373**

Honorable F. Hall Yarborough
Member
House of Representatives
Orangeburg County
The State Capitol
Columbia, South Carolina

Dear Mr. Yarborough:

Your letter of June 12, 1973, to Mr. McLeod has been referred to me for reply. You have asked whether Senate-Bill S-373 relating to the Town of Santee is constitutionally valid.

S-373 provides for the election and terms of office of the mayor and councilmen of the Town of Santee. The Bill relates only to the Town of Santee and as such is local legislation.

On March 7, 1973, an amendment to Article VIII of the Constitution of South Carolina, 1895, was ratified by the General assembly and became effective. Section 10 of the amended article reads as follows.

No laws for a specific municipality shall be enacted, and no municipality shall be exempted from the laws applicable to municipalities or applicable to a particular form of government selected by any municipality as authorized by Section 9 of the article.

It is the opinion of this office that, as of March 7, 1973, local legislation for specific municipalities is prohibited. This conclusion is strengthened by the fact that the terms of the Constitution are made mandatory and prohibitory except where expressly made directory or promissory by its own terms. (Article I, Section 29.) It should be further noted that Section 9 of amended Article VIII provides:

The structure and organization, powers, duties, functions, and responsibilities of the municipalities shall be established by general law . . . (Emphasis added.)

Thus it will be seen that the only manner by which the General Assembly may constitutionally undertake to provide for the structure and organization of municipal government is by general law, not by local legislation.

It should be noted that several questions as to the interpretation of amended Article VIII have already arisen, and certain of these questions are before the Supreme Court of South Carolina in pending litigation. The local government amendment (Article VIII) has not received authoritative construction by the courts at this date. Until the Supreme Court of South Carolina has ruled on these and other questions concerning the local government amendment, no definitive conclusions as to its interpretation can be expressed. Although the interpretation of amended Article VIII is not free from doubt at this time, it is the opinion of this office that the provisions of Sections 9 and 10 of that Article should be construed to prohibit local legislation and that Senate Bill S-373 is probably contrary to the Constitution.

Yours very truly,

Randall T. Bell
Assistant Attorney General

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