

1973 WL 26777 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 18, 1973

***1 Re: Legislation to allow the Town of Santee to levy taxes in excess of the general 40 mill levy**

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 legislation to provide that the Town of Santee can levy taxes in excess of the 40 mill levy allowed by the general law to towns having a population of less than 1,000 may be enacted by the General Assembly.

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 this 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.)

The provisions of general law relating to the millage which may be levied by a town of less than 1,000 inhabitants are contained in Section 47-161, Code of Laws of South Carolina, 1962. That section provides that each town council may impose an annual tax upon all real and personal property within the corporate limits not in excess of 40 mills. A bill allowing the Town of Santee to levy taxes in excess of the general 40 mill limit would in effect be an exemption from the provisions of this general law in favor of the Town of Santee.

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 undertake to provide for the structure and organization of municipal government is by general law, not by local legislation.

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.

Keeping in mind that the interpretation of amended Article VIII is not free from doubt at this time, it is the opinion of this office that legislation relating to a specific municipality and exempting it from the provisions of a general law would be prohibited by Section 10 of amended Article VIII and that such a law would probably be unconstitutional.

Yours very truly,

*2 Randall T. Bell
Assistant Attorney General

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