

1973 WL 26788 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 25, 1973

**\*1 Re: Bill to Amend Section 14-3216**

The Honorable Hyman Rubin  
Senator  
Richland County  
Box 5506  
Columbia, South Carolina 29250

Dear Senator Rubin:

You have inquired as to the constitutionality of a bill to amend Section 14-3216, Code of Laws, 1962, as last amended by Act No. 1147 of 1972 so as to provide additional powers for the Richland County Council in relation to the financial affairs of the County. The bill would amend the act dealing with the powers of Richland County Council so as to vest in it the power to: 'exercise all powers vested by law in the office of the treasurer and auditor as they relate to the collection, custody and disbursements of funds.

The bill would further amend the powers of the Richland County Council by amending Section 14-3216 so as to add thereto the underlined portion set forth below as follows:

'notwithstanding any other provision of law, in Richland County the County Council shall have general jurisdiction in all matters relating to County taxes and disbursement of public funds for County purposes to the exclusion of the county supervisor, auditor and treasurer.

The effect of these amendments would be to vest in the County Council full authority with respect to the collection, custody and disbursement of funds to the exclusion of the county supervisor, auditor and treasurer.

Article III, Section 34, of the Constitution provides that no special law shall be enacted where a general law may be made applicable. Article VII, Section 11, of the Constitution provides that the General Assembly may make special provisions for municipal government.' The phrase 'municipal government' has been construed to mean 'county government.' [Carroll v. York](#), 109 S.C. 1, 95 S.E.2d 121; [Floyd v. Calvert](#), 114 S.C. 116; [Ruggles v. Padgett](#), 240 S.C. 494, 126 S.E. 553.

Under these provisions, it has held that the financial affairs of counties are matters which can be the subject of special legislation. [Wills Will v. Hawkins](#), 232 S.C. 515, 103 S.E.2d 14. It has been additionally held that the abolition of county offices, such as that of supervisor, may be undertaken with respect to a county without violation of the provisions of Article III, Section 34. [Fooshe v. McDonald](#), 82 S.C. 22, 63 S.E. 3; [Craig v. Pickens County](#), 189 S.C. 164, 200 S.E. 825.

Were the provisions of Article III, Section 34, and Article VII, Section 11, the only constitutional provisions for consideration, the answer to the question presented by you would be evident under the decisions cited above. However, the Constitution has been amended by the ratification of the local government amendment on March 7, 1973. The new article requires that the General Assembly provide by general law for the structure, organization, powers, duties, functions, and the responsibilities of counties. The General Assembly has not yet undertaken such classification of counties by general law pursuant to the new constitutional mandate. The local government amendment also provides:

\*2 ‘No law for a specific county shall be enacted—.’

I have heretofore issued an opinion dated June 5, 1973, and directed to Senator William Doar, enclosed herewith, expressing the view that the foregoing prohibition against special laws for counties is effective now and its mandate is not stayed until the classification of counties is undertaken by the General Assembly. Cf. phraseology employed in Section 22 of the newly adopted constitutional amendment relating to the Judicial Department.

The local government amendment has recently been adopted and has not yet received construction by the Supreme Court of South Carolina. Consequently, any opinion with respect to the application of this amendment is necessarily subject to uncertainty. There are no judicial guideposts at this time. The comment made by the Committee which drafted the basic portions of the local government amendment recites:

‘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—.’

The ultimate decision as to what, if any, special laws may be permissibly adopted for specific counties under the local government amendment must await decision by the Supreme Court. Until that court has spoken, it is my view that the mandatory requirement of the amendment that no special laws for any county shall be enacted should be literally construed and that only those laws which manifestly cannot be made the subject of general legislation should be considered as exempt from the latest constitutional injunction. I do not think that the bill submitted is such a law.

It is my opinion that the bill submitted is most probably unconstitutional. I recognize that this is a matter about which bona fide differences of opinion can exist but I am convinced that the type of legislation proposed is such as could be the subject of a general enactment. The intent of the local government amendment appears clearly to preclude special legislation except in a highly restricted number of cases. Significant also is the fact that the last expression of the General Assembly is contained in the local government amendment which specifically provides that no laws for a specific county shall be enacted. Any legislative deviations from this constitutional prohibition must, in my view, be that which clearly cannot be made the subject of a general law. The bill submitted by you appears to relate to a subject which can be embodied in a general law.

Very truly yours,

Daniel R. McLeod  
Attorney General

#### ATTACHMENT

##### A BILL

TO AMEND SECTION 56-636.21, SOUTH CAROLINA CODE OF LAWS, AS IT RELATES TO THE SCOPE OF APPELLATE REVIEW OF DECISIONS OF THE SOUTH CAROLINA STATE BOARD OF DENTISTRY AFFECTING THE LICENSING AND REGISTRATION OF DENTISTS, DENTAL HYGIENISTS, AND DENTAL TECHNICIANS.

\*3 Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 56-636.21, South Carolina Code of Laws, is hereby amended by striking ‘sitting in its equity powers, shall be de novo’ in the last sentence, and inserting in lieu thereof ‘shall be in equity upon the record of the Board, as in certiorari.’ The section when amended shall read as follows:

‘§ 56-636.21. Appeal from suspension or revocation.—The person whose license or registration certificate has been suspended or revoked may, within thirty days, appeal from the action of the Board in suspending or revoking the same to the court of

common pleas of the county in which he resides. The proceeding before the court of common pleas shall be in equity upon the record of the Board, as in certiorari.’

SECTION 2. This act shall take effect upon approval by the Governor.

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