

1973 WL 26792 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 27, 1973

*1 The Honorable Horma C. Russell
Member
House of Representatives
Lexington County
92 Nob Hill Road
Columbia, South Carolina 29210

Dear Mrs. Russell:

You have inquired as to the validity of R-405, the title to which reflects its purpose as being 'to amend Act No. 1067 of 1972 relating to county government of Lexington County, so as to provide for multi-purpose service districts.' Act No. 1067 of 1972 provides in Section 13(7) that the County Council of Lexington County shall have authority to provide special services which are necessary to public health, welfare and safety, such as water, sewer, refuse or garbage collection and disposal facilities, fire protection, and may collect service charges from the persons benefited by such services. This section is amended by adding to Section 7:

'and in its discretion establish multipurpose service districts for the administration of such services.'

The types of service districts are characterized in R-405 as 'rural service districts' or 'urban service districts', depending upon the density of population per square mile in the area affected. Further provisions of law are incorporated in R-405, including the authority to issue bonds against the tax revenue of the districts created and to provide for the dissolution of special purpose districts previously existing within an area to be served by an urban or rural service district.

The net effect of R-405 is to vest in the Lexington County Council markedly different powers from those presently possessed by the Council.

It is my opinion that R-405 is in violation of Article VIII, Section 7, of the Constitution, which was ratified on March 7, 1973, and which provides:

'No laws for a specific county shall be enacted—.'

It is my opinion also that R-405 is violative of Article X, Section 6, of the Constitution of South Carolina, which has not yet been repealed. This provision does not, under well-known constructions given to that article by the Supreme Court of South Carolina, permit the County to engage in the general areas of activity set forth in R-405. With respect to refuse and garbage collection, a different answer may be indicated. It is my understanding that a suit is now pending before the State Supreme Court upon this issue.

The provisions of Article VIII, Section 16, authorize 'any county—upon a majority vote of the electors voting on the question,—to operate water, sewer, transportation, or other public utility systems and plants other than gas and electric—.' This provision, in my opinion, is self-executing, but as a condition precedent, it requires that a vote of the people approve the operation of the permitted types of public utility systems contemplated by R-405.

I therefore advise that, in my opinion, R-405 is violative of the provisions of Article VIII, Sections 7 and 16 of the Constitution of South Carolina.

Very truly yours,

Daniel R. McLeod

*2 Attorney General

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