

1973 WL 27622 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 5, 1973

\*1 The Honorable J. Clator Arrants  
Member  
House of Representatives  
Kershaw County  
Camden, South Carolina 29020

Dear Mr. Arrants:

You have inquired as to whether there is any existing statutory procedure provided for the recall of County Councilmen in Kershaw County.

I advise that there is no such statutory provision authorized under existing law. In certain types of municipalities, provision is made for a recall of City Councilmen, but there is no such statute applicable to counties.

You inquire also if a statute may validly be framed to permit the recall of County Councilmen in Kershaw County. I am of opinion that a statute of this type cannot constitutionally be enacted. Instead, there must be a statute of general application providing for the recall of Councilmen in counties within designated classes. These conclusions are prompted by consideration of the newly adopted Article VIII of the Constitution, which provides that:

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

The same Article provides also:

‘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.’

It is my opinion, moreover, that the provisions of Article III, Section 34, of the Constitution, which prohibit the enactment of a special law where a general law can be made applicable, would preclude the enactment of such legislation as you inquire about, aimed only at Kershaw County. The applicability of Article III, Section 34, has not at this date been considered in this context by the Supreme Court of South Carolina, but it is my view that it is presently of continuing effect.

Nor do I feel that authorization for such special legislation would come within the provisions of Article VIII, Section 11, of the Constitution. That provision, in my opinion, is most probably not presently in the Constitution, as the effect of the adoption of Article VIII appears to have been to delete it from the Constitution. This point has similarly not yet been passed upon by the Supreme Court of this State. Irrespective of this conclusion, however, it is my view that Article VII, Section 11, if still effective, would not authorize such legislation. The basis for this conclusion is [Ruggles v. Padgett](#), 240 S.C. 494, 126 S.E.2d 553.

I therefore advise that, in my opinion, legislation to permit the recall of Councilmen in Kershaw County would be unconstitutional on the grounds that it would constitute special legislation.

With best wishes,  
Cordially,

Daniel R. McLeod  
Attorney General

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