

1973 WL 27003 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 13, 1973

*1 The Honorable Allen R. Carter
State Senator
Box 5818
North Charleston, South Carolina 29406

Dear Senator Carter:

You have heretofore requested that I express an opinion upon the validity of a bill to create the Township of Charleston Heights in Charleston County.

It is my opinion that the bill can fairly be said to present an acceptable constitutional vehicle, although I point out what to me are clearly evident areas of constitutional concern. Because of the absence of established criteria for the construction of the local government amendment and because of the importance of the issues to the future development of local government in this State, a definitive answer to the problem should be rendered by the courts. As I see the primary issues, they are as follows:

a. Whether the bill creates, in effect, a municipal corporation as contemplated by the local government amendment.

In my view, it does not. Section 14(1-7).

b. Whether Article VII, Section 11, of the Constitution, relating to townships, is repealed by the adoption of the local government amendment.

In my opinion, this constitutional section was not repealed directly or by implication, although this appears to have been the intent of the drafters of the local government amendment.

At the same time, the creation of townships by the General Assembly was considered by it to be a legislative prerogative, irrespective of the absence from the Constitution of Article VII, Section 11.

c. Whether the powers granted to the Township under the terms of the bill are more extensive than those delineated in [Ruggles v. Padgett](#), 240 S.C. 494, which case is cited in the body of the bill as authority for its enactment. The powers granted are more extensive than those normally granted to townships, but it is entirely possible that any excessive grants of authority to the Township, if found objectionable, can be stricken from the bill by a court without doing violence to the remainder of the act. Whether such a result would ensue is a matter which only a court can determine. Section 14(1-7).

d. Whether a township can be bisected by an area not within its jurisdiction.

It is my understanding that this fact now exists. Assuming the correctness of this factual situation, it is my opinion that the proposed township would stand in precisely the same legal stance in this respect as it does at the present time. According to my understanding of the bill, the territory of the proposed township is the same as the territory of the existing township. I express some doubt as to the validity of this basic provision but there is no legal precedent in this State upon which to base a confident conclusion.

e. Whether general police powers may be granted to the township. Section 13.

I have some reservations with respect to this, but such grant, if objectionable, can be stricken, as was done in Gaud v. Walker, 214 S.C. 41, relating to the establishment of the Charleston County Council.

*2 f. Whether the local government amendment prohibits the enactment of special legislation creating townships.

In my view, it does not. However, the Supreme Court has not yet had an opportunity to survey, except in one limited instance, the application of the new constitutional provision.

For these reasons, should the bill be adopted by the General Assembly and presented to the Governor, I would recommend his approval of the bill. This proposed measure can have a bearing upon the course which the development of local government will take in this State in the future, and its validity should be determined by a court.

The draft to which reference is made herein is attached hereto, and marked 'A', for certainty of reference.

The Honorable John L. Henson, Representative, Charleston County, has made an inquiry similar to yours, and subsequent thereto, and I am forwarding to him a copy of this opinion.

With best wishes,
Very truly yours,

Daniel R. McLeod
Attorney General

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