



The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLES MOLONY CONDON  
 ATTORNEY GENERAL

August 19, 1997

The Honorable Vida O. Miller  
 Member, House of Representatives  
 P.O. Box 841  
 Pawleys Island, South Carolina 29585

Re: Informal Opinion

Dear Representative Miller:

You have asked for this Office's opinion on an issue concerning the Georgetown County Water and Sewer District. Your question is "[d]id the action of the Georgetown County Council in reducing the members of the Georgetown County Water and Sewer District from seven to five override Act 387 of 1975 of the General Assembly, which increased the membership from five to seven?"

The Georgetown Water and Sewer District was created by Act 733 of 1967. The function of the district is to acquire, construct and operate a water and sewer system located within Georgetown County. Section 2 of Act 733 calls for the district to be comprised of five members, who shall be resident electors of Georgetown County. The members are to be appointed by the Governor, upon the recommendation of a majority of the Legislative Delegation of Georgetown County.

The General Assembly amended Section 2 of Act 733 by Act 387 of 1975. Act 387 increased the number of members of the district from five to seven. The method of appointment of these members remained the same; they were to be appointed by the Governor upon the recommendation of a majority of the Legislative Delegation of Georgetown County.

The Georgetown County Water and Sewer District is a special purpose district. Ex Parte Georgetown County Water and Sewer District, 284 S.C. 466, 327 S.E.2d 654

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(1985). Additionally, the Water and Sewer District is located wholly within Georgetown County.

Article VIII, Section 7 of the South Carolina Constitution prohibits the enactment of legislation after March 7, 1973 that affects a specific county. Pickens County v. Pickens County Water and Sewer Authority, 312 S.C. 218, 439 S.E.2d 840 (1994). The prohibition of Article VIII, Section 7 against the enactment of laws for a specific county "... means that no law may be passed relating to a specific county which relates to those powers, duties, functions and membership, which under the mandated systems of government, are set aside for counties." Hamm v. Cromer, 305 S.C. 305, 408 S.E.2d 227 (1991); Cooper River Parks and Playground Commission v. City of North Charleston, 273 S.C. 539, 259 S.E.2d 107 (1979). Section 7 is not only applicable to special legislation creating a district, but also to special legislation dealing with districts created prior to the ratification of new Article VIII or the amendment of prior special legislation. Cooper River Parks and Playground Commission v. City of North Charleston, *supra*; Torgerson v. Craver, 267 S.C. 558, 230 S.E.2d 228 (1976).

Act 387 of 1975 was enacted after the ratification of Article VIII. Acts similar to Act 387 have been struck down by the South Carolina Supreme Court as violative of Article VIII, Section 7. *See*, Pickens County v. Pickens County Water and Sewer Authority, *supra*; Hamm v. Cromer, *supra*; Cooper River Parks and Playground Commission v. City of North Charleston, *supra*; Torgerson v. Craver, *supra*. Thus, in light of Article VIII, Section 7, the constitutionality of Act 387 would appear to be doubtful.

However, I must note that in considering the constitutionality of an act of the General Assembly, it is presumed that the act is constitutional in all respects. Moreover, such an act will not be considered void unless its unconstitutionality is clear beyond any reasonable doubt. Thomas v. Macklen, 186 S.C. 290, 195 S.E. 539 (1938); Townsend v. Richland County, 190 S.C. 270, 2 S.E.2d 777 (1939). All doubts of constitutionality are generally resolved in favor of constitutionality. While this Office may comment upon potential constitutional problems, it is solely within the province of the courts of this State to declare an act unconstitutional. Accordingly, Act 387 is presumed to be constitutional until a court rules otherwise.

In regards to your specific question of whether the Georgetown County Council may reduce the number of members sitting on the Water and Sewer District, the existence of special purpose districts is protected after the advent of Home Rule by Article VIII, Section 1 and statutorily by Section 4-9-80 of the Code, which provides in relevant part that:

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The provisions of this chapter shall not be construed to devolve any additional powers upon county councils with regard to public service districts, special purpose districts, water and sewer authorities, or other political subdivisions by whatever name designated, (which are in existence on the date one of the forms of governments provided for in this chapter becomes effective in a particular county) and such political subdivisions shall continue to perform their statutory functions prescribed in laws creating such districts or authorities except as they may be modified by act of the General Assembly, ....

Thus, Section 4-9-80 makes it clear that a county council has no additional powers with respect to a special purpose district's functions except as they may be modified by act of the General Assembly. Such act of the General Assembly must be general in nature and not special legislation.

As previously stated, the Water and Sewer District was in existence prior to the passage of Home Rule. Therefore, based on the above stated law, the Georgetown County Council would be precluded by 4-9-80 from adopting an ordinance reducing the number of members on the governing body of the Water and Sewer District. See Op. Atty. Gen. dated March 5, 1990.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch

Assistant Attorney General