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The State of South Carolina



Office of the Attorney General

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March 5, 1990

James C. Rushton, III, Esquire
Attorney for Florence County
Post Office Box 1770
Florence, South Carolina 29503

Dear Mr. Rushton:

By your letter of February 16, 1990, on behalf of Florence County Council, you have asked for the opinion of this Office on several questions concerning the Lower Florence County Hospital Board. Each of your questions will be addressed separately, as follows.

You have advised, by way of background, that the Lower Florence County Hospital District was established pursuant to Act No. 1095 of 1962 (52 Stat. 2683), as amended by Act No. 725 of 1967 (55 Stat. 1531). Pursuant to these acts there are presently five members on the governing commission. You advise further that it is the desire of the Lower Florence County Hospital Board of Directors that its membership be increased from five to seven members.

Question 1

Florence County Council wishes to know whether it may by ordinance provide for the appointment of the Lower Florence County Board of Directors. You have concluded that the Lower Florence County Hospital District is a special purpose district and thus Florence County Council is precluded by Sections 4-9-80 and 4-9-170 of the South Carolina Code of Laws from adopting an ordinance allowing council to make such appointments or altering the number of members on the governing body.

We concur with your conclusions. By an opinion dated September 3, 1981, this Office concluded that the Lower Florence County Hospital District is a special purpose district. By the express terms of

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Section 4-9-170, a county council is precluded from exercising appointment powers for the governing body of a special purpose district; thus, that opinion concluded, in part, that Florence County Council could not appoint the members of the hospital district's governing board.

Section 4-9-80 must also be considered. It provides in relevant part that

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 government 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,

We agree with your conclusion that this statute would preclude the enactment of an ordinance by Florence County Council with respect to Lower Florence County Hospital District. See also Ops. Atty. Gen. dated September 6, 1989; May 12, 1987; March 5, 1987; and September 3, 1985, among many others.

Question 2

You also ask whether the General Assembly can statutorily increase the membership of the Board of Directors for the Lower Florence County Hospital District. Your research has found several opinions of this Office concluding that an act of the General Assembly changing the composition of the governing body of a special purpose district located solely in one county would likely be violative of Article VIII, Section 7 of the State Constitution.

Article VIII, Section 7 prohibits the enactment, by the General Assembly, of an act for a specific county. This provision has been construed in cases such as Torgerson v. Craver, 267 S.C. 558, 230 S.E. 2d 228 (1976); Knight v. Salisbury, 262 S.C. 565, 206 S.E.2d 875 (1974); and Cooper River Park and Playground Commission v. City of North Charleston, 273 S.C. 639, 259 S.E.2d 107 (1979). Based on cases such as these, we have consistently advised that legislation for special purpose districts located solely in one county would most probably violate Article VIII, Section 7. See, as examples of the numerous opinions, Ops. Atty. Gen. dated February 5, 1990 (Lexington County Recreation Commission); June 6, 1989 (Newberry

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County Park Commission); June 6, 1989 (Lugoff Water District); June 19, 1989 (Dalzell Water District); and June 6, 1989 (South Greenville Area Fire District), among many others. Of course, such legislation is entitled to the presumption of constitutionality unless and until a court declares otherwise. Thus, an act specifically adopted with reference to the Lower Florence County Hospital District could contravene Article VIII, Section 7 of the State Constitution. 1/

In researching this question, you advise that you found two apparently conflicting opinions by the Honorable Karen Henderson relative to the hospital district and appointment of its board members; those opinions are dated November 21, 1975 and September 3, 1981. As noted earlier, the opinion of September 3, 1981 concluded in part that the hospital district would be a special purpose district and thus Florence County Council would be precluded by Section 4-9-170 of the Code from appointing members of the district's governing body. The opinion of November 21, 1975 construed Act No. 27 of 1975, which act substituted Florence County Council in place of the Florence County Legislative Delegation when the delegation was to exercise recommendatory power relative to appointments. 2/ Thus, the 1975 opinion dealt with council's making recommendations rather than the actual appointments. The two opinions are not inconsistent.

Question 3

The proper method for changing the composition of the governing body of the hospital district is your third question. You conclude that Florence County Council may not adopt an ordinance to accomplish this since the hospital district would be a special purpose district and further that the General Assembly would be precluded by Article VIII, Section 7 from adopting an act for a specific county.

1/ No proposed legislation has been examined in this regard. The foregoing comments are necessarily general as to the potential constitutional problems. The conclusion could change depending on how legislation might be drafted.

2/ Act No. 27 of 1975 would be constitutionally suspect, as well, having been adopted after March 7, 1973, the effective date of Article VIII of the Constitution. Of course, the presumption of constitutionality attaches unless and until a court should declare otherwise. This Office can only point out constitutional problems, leaving the actual declaration of unconstitutionality to the courts.

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We have advised on several occasions that the preferable manner to alter the composition of the governing body of a special purpose district would be the adoption of a general law by the General Assembly to provide a means for such alteration. See, for example, Op. Atty. Gen. dated February 25, 1986. Such would avoid constitutional conflicts with various provisions such as Article VIII, Section 7 and Article III, Section 34 (IX) (enacting a special law where a general law could be made applicable).

We trust that the foregoing has satisfactorily responded to your inquiries. If we may assist you further, please advise.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/nnw

REVIEWED AND APPROVED BY:

Robert D. Cook

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