

THE STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY GENERAL  
COLUMBIA

OPINION NO. \_\_\_\_\_

October 5, 1989

SUBJECT: Taxation and Revenue - Authority to establish level of compensation for the Oconee County Assessor.

SYLLABUS: The compensation of the Oconee County Assessor is to be established by the Oconee County Legislative Delegation unless and until Act 250, Acts of 1973, is repealed or otherwise modified by the Oconee County Council.

TO: Honorable Robert N. McLellan  
Member, House of Representatives

FROM: Joe L. Allen, Jr. *JLA*  
Chief Deputy Attorney General

QUESTION: Is the compensation for the Oconee County Assessor to be established by the Legislative Delegation or County Council?

APPLICABLE LAW: Act 250, Acts of 1973 and Act 283, Acts of 1975.

DISCUSSION:

This question presents an issue of local government as it relates to an Act of the General Assembly that is also local in its application. The 1973 Act provides in part that:

" . . . The county assessor shall receive such compensation as the legislative delegation shall determine and provide for in the annual county appropriations act. . ."

By clear language, the compensation is to be prescribed by the Legislative Delegation. The real issue, however, is whether the Home Rule Act repealed this provision. Home Rule was provided by Act 283, Acts of 1975. A part of Section 3 of the Act provides:

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"All operations, agencies and offices of county government, appropriations and laws related thereto in effect on the date the change in form becomes effective shall remain in full force and effect until otherwise implemented by ordinance of the council pursuant to this act. Provided, however, that county councils shall not enact ordinances in conflict with existing law relating to their respective counties and all such laws shall remain in full force and effect until repealed by the General Assembly, or until January 1, 1980, whichever time is sooner, except that when a form of government other than the board of commissioners form as provided for in Article 6 of Chapter 63 of Title 14 of the 1962 Code shall have been selected and an initial election of council held, this proviso shall not apply to appropriation matters." (Emphasis added.)

The underscored language excludes appropriation matters from the time constraints of the provision. This exclusion conferred power upon the Council to repeal or modify appropriation matters whenever the form of government was adopted.

The first part of the section, however, requires that all laws relating to the assessor's office remain "in full force and effect until otherwise implemented by ordinance of the county pursuant to this Act." Act 250, Acts of 1973, therefore remains in "full force and effect" until repealed or otherwise modified by ordinance of the county governing body. See Graham v. Creel, 289 S.C. 165, 345 S.E.2d 717.<sup>1</sup>

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<sup>1</sup>The constitutionality of the statute that imposes the duties and powers upon the Legislative Delegation is most probably unconstitutional. They appear to be executive and administrative in nature and substance and would thus be

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CONCLUSION:

The compensation of the Oconee County Assessor is to be established by the Oconee County Legislative Delegation unless and until Act 250, Acts of 1973, is repealed or otherwise modified by the Oconee County Council.

JLAJr:wcg

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in conflict with the separation of powers of the three branches of government as required by Article I, Section 8, of our Constitution. (For cases see 6 S.C.D., Constitutional Law, Key 58.) We recommend that the County Council take action to remove this constitutional issue, such authority being conferred by the Home Rule Act.