

The State of South Carolina



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January 20, 1987

The Honorable Paul E. Short, Jr.
Chairman, Special Laws Subcommittee
Judiciary Committee
House of Representatives
Room 215, Blatt Building
Columbia, South Carolina 29211

Dear Representative Short:

By your letter of January 14, 1987, you asked that this Office examine H.2083 and advise you as to its constitutionality. The bill in its present form would require a county governing body to change the size or manner in which members of a special purpose or public service district are selected if requested by resolution of the district.

If the bill should be adopted by the General Assembly, it must be remembered 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 (1937); 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. However, with H.2083 as presented to this Office, we do not see any constitutional difficulties, particularly with respect to Articles VII and VIII of the State Constitution.

H.2083 proposes to add Section 4-9-81 to the Code of Laws of South Carolina (1976, as amended), as follows:

When any public service district, special purpose district, water and sewer authority, or other political subdivision is providing any service or function that is or could be provided by the governing body of a county within which it is wholly

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located, its governing body by resolution directed to the county council may request a change in the size or manner in which members of its governing body are selected. Upon receipt of a resolution, the county council shall by ordinance effect only such changes as are requested by the governing body in its resolution, and the county council action has the full force and effect of law from the effective date of the ordinance.

The proposed legislation would provide a mechanism for special purpose or public service districts to enlarge their governing bodies in instances in which Sections 4-9-80 or 6-11-610 of the Code would not be applicable; these are the only two procedures at present, other than an enactment of the General Assembly, by which special purpose district governing bodies may be enlarged.

Article VIII, Section 7 of the State Constitution prohibits the adoption, by the General Assembly, of an act for a specific county. There are numerous special purpose or public service districts within this State comprised of territory from only a single county, as established by the General Assembly, in some cases many years ago. In some instances it may be necessary or desirable to effect changes in the districts' enabling acts, but such changes by the General Assembly are precluded. Thus, a law general in form is required. Spartanburg Sanitary Sewer District v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984). This bill may thus meet the needs of special purpose or public service districts which could not otherwise be met by the General Assembly.

Similarly, the General Assembly recognized a gap in the law following the adoption of Article VIII, Section 7 of the Constitution, by the passage of Act No. 926 of 1974, to authorize county councils to enlarge, diminish, or consolidate special purpose districts. Section 1 of that Act contains the findings of the General Assembly:

The General Assembly finds that in order to provide special service of various sorts in (as a general rule) unincorporated areas of certain counties of the State, numerous special purpose districts were created. Many of the special purpose districts created have the function of providing water to those residing within the district or sewer service which provides for the collection, treatment and disposal of sewage or other effluents. In certain instances, special purpose districts provide fire protection and garbage disposal. Others have been created to provide hospital, recreation and educational services.

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By reason of the adoption of new Article VIII to the Constitution of this State as of March 7, 1973, questions exist as to the power of the General Assembly to enact laws for specific counties which would enlarge the area of any existing special purpose district or which would allow two or more special purpose districts to consolidate. In view of the growth in and about many special purpose districts, it may become desirable to enlarge or consolidate such districts. In other areas where functions granted to special purpose districts have not been exercised or have only been partially exercised and a lack of need exists in portions of existing special purpose districts, it may become desirable to diminish the size of existing special purpose districts. In order to provide a means by which existing special purpose districts may be enlarged, diminished or consolidated, the General Assembly has determined to grant to the governing bodies of the several counties of the State the power to enlarge or diminish the areas and consolidate the areas and functions of any special purpose districts within such county.

In enacting this act, the General Assembly is by general law exercising powers specifically granted to it by Section 7 of new Article VIII of the Constitution.

Act No. 926 of 1974 is codified as Section 6-11-410 et seq. of the Code. The Act authorizes county councils to take certain actions with respect to enlarging, diminishing, or consolidating special purpose districts and indeed requires county councils to take certain actions. See Section 6-11-430 of the Code. We are not aware of any court decisions which questioned the validity or constitutionality of these Code sections.

One provision of the Home Rule Act, Section 4-9-170 of the Code, contains certain provisions which could not be contravened by a county council adopting an ordinance pursuant to H.2083. Section 4-9-170 provides:

The council shall provide by ordinance for the appointment of all county boards, committees and commissions whose appointment is not provided for by the general law or the Constitution. Each council shall have such appointive powers with regard to existing boards and commissions as may be authorized by the General Assembly except as otherwise provided for by the general law and the Constitution, but this authority shall not extend to school districts,

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special purpose districts or other political subdivisions created by the General Assembly; provided, however, that beginning January 1, 1980, the council shall provide by ordinance for the appointment of all county boards, committees and commissions whose appointment is not provided for by the general law or the Constitution, but this authority shall not extend to school districts, special purpose districts or other political subdivisions created by the General Assembly.

This Office has advised frequently that this provision does not confer appointment authority upon county councils with respect to special purpose or public service districts. Ops. Atty. Gen. dated February 19, 1986; September 23, 1982; July 29, 1980; August 9, 1979; July 5, 1979; and February 1, 1979. Likewise, H.2083 would not confer authority upon county councils to make appointments to governing bodies of special purpose or public service districts.

It must also be noted that by Section 4-9-80 of the Code, the effect of the Home Rule Act upon the relationship of county councils and special purpose districts has been limited:

The provisions of this chapter [the Home Rule Act] 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,

See also Berry v. Weeks, 279 S.C. 543, 309 S.E.2d 744 (1983). Notwithstanding Section 3 of the Home Rule Act, Act No. 283 of 1975, a county council under Section 4-9-80 would not have general authority to modify local or special legislation relative to special purpose districts except in those limited instances which have been authorized by the General Assembly. Cf., Graham v. Creel, 289 S.C. 165, 345 S.E.2d 717 (1986). Thus, special purpose districts are protected from actions of county councils except as specifically authorized by the legislature. Berry v. Weeks, supra.

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In conclusion, there appears to be no constitutional difficulty with H.2083 as presented to this Office for review. As long as its provisions were not applied, in a given instance, in a manner inconsistent with Section 4-9-170 of the Code, the bill does not appear to be otherwise inconsistent with general laws already in existence.

Sincerely,

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PDP/rhm

REVIEWED AND APPROVED BY:

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