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ALAN WILSON
ATTORNEY GENERAL

September 23, 2014

Wesley P. Bryant
Georgetown County Attorney
PO Box 421270
Georgetown, SC 29442

Dear Mr. Bryant:

This Office received your request for an opinion regarding the ownership of the Georgetown County Rice Museum/Town Clock and its contents. You state that “the Rice Museum/Town Clock possesses an interesting history which gives rise to the necessity of an interpretation of the Home Rule Act as it applies to events affecting the Georgetown County Historical Commission.”

From your letter, our understanding of the history is as follows:

prior to the Home Rule Act, the Georgetown County Historical Commission (“Historical Commission”) was originally created by the State Legislature February 9, 1967. At that time, the Governor of South Carolina appointed the members of the Historical Commission upon the recommendation of the County Delegation. The Historical Commission’s main function at the time was the management of the Rice Museum which was located in the Town Clock building; the Town Clock building was owned by the City of Georgetown. The Historical Commission, in 1970, pursuant to requirements of a federal grant, received fee simple title to the Town Clock building via deed from the City of Georgetown. The Historical Commission on July 16, 1970 passed a resolution stating that it would re-convey the Town Clock building to the City of Georgetown for no consideration if the Historical Commission failed to use it for six months or if the Commission was dissolved.¹

In May 1980, Georgetown County Council (“County Council”) enacted an ordinance bringing the Historical Commission under the control of the County Council. The Historical Commission has continuously operated in this manner since 1980. Further, in the fall of 1987, the County Council enacted an ordinance which made uniform the policies concerning all county boards and commissions. A provision of this ordinance provides that any property acquired by a board or commission is to be titled in the name of Georgetown County. This ordinance does not require that property previously titled in any board or commission be conveyed to the County but apparently applies only prospectively so that any property acquired subsequent to it would be required to be placed in the name of the County, which has been the practice through the present day.

¹ We have not been provided with a copy of this resolution and the copy of the deed that we have received does not contain a reversion clause.

Your questions regarding ownership of the Georgetown County Rice Museum/Town Clock and its contents are discussed below.

LAW/ANALYSIS:

- I. Although the subject real property was transferred to the Georgetown County Historical Commission as created by the General Assembly prior to the Home Rule Act, is Georgetown County, a body politic and corporate, the successor in interest to the fee simple title pursuant to actions taken in conjunction with the Home Rule Act and its subsequent re-establishment of the Georgetown County Historical Commission as a county commission?**

A. Definition of Home Rule

In order to answer your question, we must first discuss “home rule.” In a prior opinion, we explained the history of home rule and showed its application in subsequent case law. We stated the following:

It is first instructive to note that in recent years - since the advent of Home Rule - the autonomy and authority of counties has increased significantly. Pursuant to Art. VIII, § 17 of the South Carolina Constitution, it is provided that

[t]he provisions of this Constitution and all laws concerning local government shall be liberally construed in their favor. Powers, duties, and responsibilities granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution.

In accordance with this constitutional mandate, the General Assembly has enacted S.C. Code Ann. § 4-9-25, which states the following:

[a]ll counties of the State, in addition to the powers conferred to their specific form of government, have authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of these powers in relation to health and order in counties *or respecting any subject as appears to them necessary and proper for the scrutiny, general welfare, and convenience of counties or for preserving health, peace, order and good government in them. The powers of a county must be liberally construed in favor of the county and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties.*

(emphasis added).

Our Supreme Court has recognized in its decisions these Home Rule provisions requiring that local governments be given a certain degree of autonomy under Home Rule. For example, in *Williams v. Town of Hilton Head Island*, 311 S.C. 417, 422, 429 S.E.2d 802 (1993) the Court concluded that "... by enacting the Home Rule Act ... the legislature intended to abolish the application of Dillon's Rule in South Carolina and restore autonomy to local government." Dillon's Rule has long provided that a municipal corporation possesses only such powers as expressly granted, and those necessarily or fairly implied therefrom, as well as those powers "essential to the accomplishment of the declared objects and purposes of the corporation" *Id.* at 421. In *Williams*, however, the Court concluded that Article VIII (relating to Home Rule), as well as the Home Rule Act "... bestow upon municipalities the authority to enact regulations for government services deemed necessary and proper for the security, general welfare and convenience of the municipality or for preserving health, peace, order and good government, obviating the requirement for further specific statutory authorization so long as such regulations are not inconsistent with the Constitution and general law of the State." *Id.* at 422.

Although *Williams'* abrogation of Dillon's Rule concerned municipalities, in *Op. S.C. Atty. Gen.*, January 19, 1995, we concluded that the holding of *Williams* was also likely applicable to county governments as well. There, we noted that "[w]hile *Williams* did not address county government vis à vis Dillon's Rule, *Williams* would certainly be of great precedential value in arguing that Dillon's Rule has [also] been abolished as to county governments."

Our office has recognized that "[t]he purpose behind 'Home Rule'. . .was simply to remove the Legislature from interference in the day-to-day local affairs of local governments." See *Op. S.C. Atty. Gen.*, February 22, 2013 (2013 WL 861300). In *Glasscock v. Sumter County*, 361 S.C. 483, 604 S.E.2d 718, 722 (Ct. App. 2004), the South Carolina Court of Appeals explained the reason for Home Rule:

[t]hat local governments should be afforded a reasonable degree of latitude in devising their own individual procurement ordinances and procedures is entirely consistent with our state's now firmly rooted constitutional principle of "home rule." By the ratification of Article VIII of our state constitution in 1973, substantial responsibility for city and county affairs devolved from the General Assembly to the individual local governments. "[I]mplicit in Article VIII is the realization that different local governments have different problems that require different solutions. *Hospitality Ass'n of South Carolina v. County of Charleston*, 320 S.C. 219, 230, 464 S.E.2d 113, 120 (1995); see also *Knight v. Salisbury*, 262 S.C. 565, 571, 206 S.E.2d 875, 877 (1974) (opining that

the constitutional amendment providing for home rule was “prompted by the feeling that Columbia should not be the seat of county government, and that the General Assembly should devote its full attention to problems at the state level”).

In summary, home rule makes it possible for counties, and not the State Legislature, to enact ordinances and resolutions protecting the health, security, and welfare of the county’s citizens so long as the ordinances and resolutions are not inconsistent with the State Constitution or general laws of the state.

B. Effect of Home Rule on the Historical Commission

Our understanding from your letter is that the Georgetown County Council (“County Council”) assumed control of the Georgetown County Historical Commission (“Historical Commission”) pursuant to Act Number 283.² Act Number 283 provides a method for the operations, agencies, and offices of the counties to come under the jurisdiction and control of the county councils. It states:

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. . .

1975 S.C. Acts 283, section 3.

Pursuant to the Act, each county council is allowed to make its own decision regarding its operations, agencies, and offices. Op. S.C. Atty. Gen., June 4, 1991 (1991 WL 632991) explains that a county has two options. It can let the agency or office continue as it was being operated prior to home rule or it can otherwise provide by ordinance pursuant to its home rule powers.

A county has several choices when providing for its agencies by ordinance. Section 4-9-30 provides certain enumerated powers to county governments, which includes the ability:

² Accordingly, we will consider the Historical Commission to be a county agency and not a special purpose district, since a special purpose district can not be brought under county control. See S.C. Code Ann. § 4-9-80 (1976 Code, as amended), which states:

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. . .

(6) to establish such agencies, departments, boards, commissions and positions in the county as may be necessary and proper to provide services of local concern for public purposes, to prescribe the functions thereof and to regulate, modify, merge or abolish any such agencies, departments, boards, commissions and positions, except as otherwise provided for in this title. . .

S.C. Code Ann. § 4-9-30(6) (1976 Code, as amended) (emphasis added).

In this instance, County Council chose to provide by ordinance for the Historical Commission instead of allowing it to operate as it did prior to Home Rule. A review of City of Georgetown Code of Ordinances May 13, 1980 (as amended by Georgetown Code of Ordinances § 2009-52; November 10, 1987; § 2008-25) provided by you appears to indicate that the County Council did not repeal 1967 S.C. Acts 23 (as amended by 1977 S.C. Acts 332; 1978 S.C. Acts 761), which created the Historical Commission.³ The County Council does not appear to have abolished the Historical Commission or established a new one. Instead, it appears to have modified the Historical Commission and allowed it to continue to exist. If this is the case, then title to the Georgetown County Rice Museum/Town Clock would remain with the Historical Commission.

However, the Historical Commission, as discussed above, is a county agency. We have considered county agencies and their property in prior opinions. In our opinion dated May 30, 2008, we determined that the Commissioners of Public Works of the City of Greenwood was an agency of the City of Greenwood. Because it was an agency, it was essentially the City of Greenwood who owned the waterworks system that the Commissioners of Public Works managed. Op. S.C. Atty. Gen., May 30, 2008 (2008 WL 2324818). Similarly, we stated in our March 5, 1982 opinion that because the Greenwood County Hospital Board was an instrumentality of the County under the Home Rule Act, the County would be the owner of the assets of the Board if the hospital board dissolved but that the assets must be used by the County solely for public purposes. Op. S.C. Atty. Gen., March 5, 1982, No. 82-12 (1982 WL 154982).

Since the Historical Commission is an agency of Georgetown County, Georgetown County is the true owner of the Georgetown County Rice Museum/Town Clock according to our prior opinions. Nonetheless, the property must continue to be used for a public purpose.

In the facts you provided our office, you stated that the Historical Commission passed a resolution stating that it would re-convey the Town Clock building to the City of Georgetown for no consideration if the Historical Commission failed to use it for six months or if the Commission was dissolved. This is obviously of concern to you. In a prior opinion, we stated:

³ Georgetown Code of Ordinances May 13, 1980 states that it is “[a]n Ordinance to Create the Georgetown County Historical Commission and to Preserve Its Powers and Duties, Pursuant to and in Compliance with Section 4-9-30 Code of Laws of South Carolina for 1976 as Amended.” However, it does not refer to the Legislative Act creating the Historical Commission or explicitly repeal it.

“Resolutions do not normally have mandatory or binding effect. Rather, the passage of resolutions is generally considered to be merely directory.” Glasscock Co., Inc. v. Sumter County, 361 S.C. 483, 604 S.E.2d 718 (Ct. App. 2004). A resolution is defined as “[a] formal expression of the opinion or will of an official body or a public assembly, adopted by vote...The chief distinction between a ‘resolution’ and a ‘law’ is that the former is used whenever the legislative body passing it wishes merely to express an opinion as to some given matter or thing and is only to have temporary effect on such particular thing, while by a ‘law’ it is intended to permanently direct and control matters applying to persons or things in general.” Black’s Law Dictionary (6th ed. 1990).

Op. S.C. Atty. Gen., April 29, 2014 (2014 WL 1909729). Accordingly, we believe the Historical Commission’s resolution is irrelevant.

II. Is the personal property contained therein, as may have been owned by the Georgetown County Historical Commission and used for display and other functions prior to the Home Rule Act, now owned by Georgetown County, a body politic and corporate, as successor in interest to the pre-Home Rule Historical Commission?

We asserted above that “we stated in our March 5, 1982 opinion that because the Greenwood County Hospital Board was an instrumentality of the County under the Home Rule Act, the County would be the owner of the assets of the Board if the hospital board dissolved but that the assets must be used by the County solely for public purposes. Op. S.C. Atty. Gen., March 5, 1982, No. 82-12 (1982 WL 154982).” Furthermore, we determined in a February 17, 1981 opinion that because the Greenville County Art Museum Commission was a county board, the Greenville County Council pursuant to home rule could as of January 1, 1980 enact an ordinance modifying the special legislation pertaining to the Commission. We also opined in that opinion “[w]hen disposing of personal property, the [Greenville County Art Museum] Commission should follow any Greenville County ordinance which prescribes the manner in which county property may be disposed of.” Therefore, the personal property of the Historical Commission is owned by Georgetown County.

CONCLUSION

According to our prior opinions, Georgetown County is the true owner of the Georgetown County Rice Museum/Town Clock since the Historical Commission is an agency of Georgetown County. Nonetheless, the property must continue to be used for a public purpose. The personal property of the Historical Commission is also owned by Georgetown County.

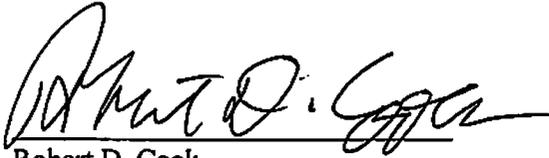
Sincerely,



Elinor V. Lister
Assistant Attorney General

Wesley P. Bryant
Page 7
September 23, 2014

REVIEWED AND APPROVED BY:

A handwritten signature in black ink, appearing to read "Robert D. Cook", written over a horizontal line.

Robert D. Cook
Solicitor General