

1983 WL 181686 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 23, 1983

***1 RE: Georgetown County Water and Sewer Authority Act #733 of 1967**

Honorable William W. Doar, Jr.
Member
South Carolina Senate
Post Office Box 142
Suite 404
Greesette Senate Office Building
Columbia, South Carolina 29202

Dear Senator Doar:

You have requested an opinion as to whether [§ 4-9-80, Code of Laws of South Carolina](#), 1976 (as amended) provides a constitutionally valid means by which a special purpose district could be dissolved and its functions transferred to the county government. An earlier opinion of this office advised that if it were challenged in court, this section would most probably be declared unconstitutional as being violative of [Art. VIII, § 7 of the South Carolina Constitution](#). Atty. Gen. Op. dated August 7, 1981 (copy enclosed). In our opinion the analysis set out in that earlier opinion remains valid.

It was suggested in your letter that the 'one-shot' exception to the [Art. VIII](#) prohibition set out in [Duncan v. York, 267 S.C. 327, 228 S.E.2d 92 \(1976\)](#), might apply to a special act dissolving a special purpose district and transferring its powers and responsibilities to the County Council. However, it is our opinion that any such act would most probably be unconstitutional. The Supreme Court in a later case held that 'once a legally constituted government becomes functional the [Duncan](#) case exception ends' [Horry County v. Cooke, 275 S.C. 19, 24, 267 S.E.2d 82, 85 \(1980\)](#). Since the Georgetown County Council is fully operating under home rule now, the [Duncan](#) exception would not apply to a local act for the subject special purpose district.

The General Assembly has implicitly recognized the potential constitutional problems which arise in the context of special legislation for special purpose districts. In enacting Act No. 926, Act and Joint Resolutions, 1974 [1974 (58) 2018], a general law authorizing a procedure by which county councils could alter the size of existing special purpose districts, the General Assembly set out legislative findings as follows:

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 service area of any existing special purpose district . . .

This reasoning applies with equal force to any special legislation concerning 'special purpose districts performing functions now delegated to counties under 'Home Rule'.' [Cooper River Park and Playground Commission v. City of North Charleston, 273 S.C. 639, 642, 259 S.E.2d 107, 109 \(1979\)](#).

For all of the foregoing reasons, it is our opinion that [§ 4-9-80, supra](#), would almost certainly be held unconstitutional if it were challenged in court.

Sincerely yours,

David C. Eckstrom

Assistant Attorney General

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