

1983 S.C. Op. Atty. Gen. 56 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-37, 1983 WL 142708

Office of the Attorney General

State of South Carolina

Opinion No. 83-37

July 11, 1983

*1 The Honorable Dick Elliott
Member
House of Representatives
Post Office Box 3165
North Myrtle Beach, SC 29582

Dear Representative Elliott:

You have asked this Office whether the Horry County Legislative Delegation may create a 'Blue Ribbon Committee' concerning education matters in Horry County and empower that Committee to exercise certain sovereign powers with respect to education. We would advise that the Horry County Legislative Delegation does not have the authority to exercise such powers.

The supreme legislative power of the state is vested in the General Assembly. [Article III, Section 1, South Carolina Constitution](#); [Parker v. Bates](#), 216 S.C. 52, 56 S.E.2d 723, 725 (1949). A county legislative delegation then, has no inherent powers, and cannot exercise sovereign power absent a delegation of authority to it by the General Assembly. See [State v. Watkins](#), 259 S.C. 185, 191 S.E.2d 135 (1972). Put simply, '[D]elegations are bodies and agencies to carry into effect the fully enacted law.' [State v. Lewis](#), 181 S.C. 101, 186 S.E. 625, 635 (1936). In [S. C. State Highway Dept. v. Harbin](#), 266 S.C. 585, 594, 86 S.E.2d 466, 470 (1955), cited in [State v. Watkins](#), *supra*, the Supreme Court enunciated the characteristics that a statute must possess for there to be a valid delegation of power by the Legislature. The Court said in part:

The question of delegation of legislative power has confronted the courts with many perplexing problems, particularly during recent years when the complexities of government have been constantly on the increase. It is well settled that while the legislature may not delegate its power to make laws, enacting a law complete in itself, it may authorize an administrative agency or board 'to fill up the details' by prescribing rules and regulations for the complete operation and enforcement of the law within its expressed general purpose [cites omitted] . . . 'However, it is necessary that the statute declare a legislative policy, establish primary standards for carrying it out, or lay down an intelligible principle to which the administrative officer or body must conform, with a proper regard for the protection of the public interests and with such degree of certainty as the nature of the case permits, and enjoin a procedure under which, by appeal or otherwise, both public interests and private rights shall have due consideration.' [cites omitted].

Our research has revealed no statute that empowers the Horry County Legislative Delegation to create the type of 'Blue Ribbon Committee' about which you have inquired. Moreover if such a statute existed, it would have to meet the above stated criteria in order to be valid.

In addition, such a delegation must not violate the separation of powers clause of the [South Carolina Constitution, Article I, § 8](#) (1895 as amended). [Gunter v. Blanton](#), 259 S.C. 436, 192 S.E.2d 473 (1972) [State ex rel McLeod v. McInnis](#), 278 S.C. 307, 295 S.E.2d 633 (1982). In [Gunter v. Blanton](#), *supra*, the Court struck down an act giving the Cherokee County Legislative Delegation the authority to approve or disapprove any tax increase adopted by the Board of Trustees of Cherokee County School District Number 1. The Court concluded that such a delegation of power 'clearly assigns to them [Cherokee Delegations] a dual role in violation of the separation of powers clause of the Constitution.' A delegation then, of any executive or judicial functions to a county delegation would probably violate the separation of powers clause of the Constitution.

*2 Also, a delegation of legislative authority to a county delegation may well be unconstitutional. State ex rel. McLeod v. McInnis, *supra*; Gunter v. Blanton, *supra*. In Bramlette v. Stringer, 186 S.C. 134, 195 S.E. 257 (1938), where the Court enjoined certain actions of the Greenville County Legislative Delegation, the Court pointed out that the only permissible exercise of legislative functions by a county delegation is ‘the performance of . . . duties . . . in efficient enforcement and execution of a complete law.’ The Court concluded that ‘nothing can be added to, or taken away from the act after it leaves the lawmaking body . . . [cites omitted],’ and ‘no county legislative delegation can be clothed with power to enact laws during vacation.’¹

In conclusion, then, since we have been able to locate no act by the General Assembly expressly granting the Horry County Legislative Delegation the authority to create a ‘Blue Ribbon Committee,’ it would appear that such authority does not exist. Further, even if such an act exists, for the county delegation to create such a committee and empower it with sovereign functions would likely raise serious constitutional problems as discussed above.

Sincerely,

Robert D. Cook
Executive Assistant for Opinions

Footnotes

1 Certain delegations of power to county delegations have traditionally been held to be constitutional. For example, election and appointment to office has been held to be a valid delegation of power to county delegations. In State v. Bowden, 92 S.C. 393, 74 S.E. 866, 870 (1912), quoted in State v. Lewis, *supra*, the Court said:

The truth is that the power of appointing or electing to office does not necessarily and ordinarily belong to either the legislative, the executive or the judicial department. It is commonly exercised by the people, but the legislature may, as the law making power when not restrained by the Constitution provide for its exercise by either department of the government, or by any person or association of persons whom it may choose to designate for that purpose. It is an executive function when the law has committed it to the executive, a legislative function when the law has committed it to the legislature, and a judicial function . . . when the law has committed it to . . . the judiciary.

In State v. Lewis, *supra*, the Court held that an act empowering a county delegation to elect district Highway Commissioners was constitutional since the act was complete, and action by the delegation ‘was not predicated upon the determination of any fact . . . by the delegation as a prerequisite to such consent . . .’ and substance of the statute . . .’ See, also, Benjamin v. Housing Authority, 198 S.C. 79, 15 S.E.2d 737 (1941).

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