

1982 WL 189306 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 28, 1982

\*1 J. Lewis Cromer, Esquire  
Office of the Richland County Attorney  
Richland County Judicial Center  
1701 Main Street  
Columbia, South Carolina 29202

Dear Mr. Cromer:

You have asked the opinion of this Office on whether Section 3 of Act Number 581 of 1971 [hereafter Section 3] applies to the East Richland County Public Service District, which is governed by a Commission of the same name [hereafter the Commission will be used to refer to both jointly]. Section 3 provides:

It shall be unlawful for any officer, board, commission, committee or agency in Richland County, which is funded in whole or in part from county funds, or any officer, board, commission, committee or agency of the county over which the governing body or county legislative delegation has any appointive powers, to employ an attorney, other than the county attorney, in any matter whatsoever or to agree to pay for services which might be rendered to them out of public funds without first obtaining the county attorney's approval of the employment of such attorney.

This section shall be deemed cumulative to any other provisions of law, but in the event of conflict between this section and any other provision of law, this section shall be controlling. [Emphasis Added]

As I understand from the information presented by you, the Commission, which was established in 1960 by Act Number 1114 of the General Assembly, is not funded, in whole or in part, from Richland County funds.<sup>1</sup> Consequently, for Section 3 to apply, (1) the Commission must be a commission or agency 'of the county', and (2) the Richland County Council or Legislative Delegation must have some appointive power over the Commission.

At least until March 7, 1973, the effective date of Article VIII of the Constitution, which granted counties what is commonly referred to as home rule, special service districts created by the General Assembly, such as the Commission, were subdivisions of the State rather than commissions, agencies, or subdivisions of the counties. See, [Knight v. Salisbury](#), 262 S.C. 565, 573, 574, [dissenting op. of Justice Bussey] 576-579, 206 S.E.2d 875 (1974); Article X, § 6, [as existed prior to 1977 revision]; Article X, § 14 [as existed after the 1977 revision]; Article VII, § 11. Although future legislation dealing with the Commission should be subject to the requirements of Article VIII [see, [Torgerson v. Craver](#), 267 S.C. 558, 230 S.E.2d 228 (1976)], the mere implementation of home rule in 1973 did not transform the Commission, which was established in 1960, from a subdivision of the State into a commission, agency or other entity of Richland County or expand the meaning and application of Section 3, which was enacted in 1971. [Neel v. Shealey](#), 261 S.C. 266, 276, 199 S.E.2d 542 (1973) [Article VIII is not applicable to legislation passed prior to March 7, 1973.]; [Article VIII, § 1](#); [Section 4-9-80, Code of Laws](#), 1976, as amended. Nor did the transfer in 1971 to the Richland County Council of the authority to recommend to the Governor appointments for the Commission change that status. Act Number 825, 1971.

\*2 Because under the existing statutes the East Richland County Public Service Commission is a subdivision of the State, and not a commission or agency of Richland County, it is the opinion of this Office that Section 3 of Act 581 of 1971 is not

