

1980 WL 120579 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 4, 1980

***1 SUBJECT: Education, Higher Counties, Home Rule**

Those laws which provide for the appointment of the members of the various multi and single county technical college commissions in this state appear to be valid under Article III § 34 and [Article VIII § 7 of the Constitution](#) and do not appear to be in conflict with Home Rule laws.

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Question:

Whether appointment of the members of the technical-college commissions in this state should continue to be controlled by the special provisions for them or whether, after January 1, 1980, appointments are controlled by the Home Rule Act.

Constitutional Provisions, Statutes and Cases Cited:

[Art. III § 34](#), [Art. VIII § 7](#), and [Art. XI § 3](#), Constitution of South Carolina, 1895, and the amendments thereto; § 4-9-10, [et seq.](#) and § 59-53-10, [et seq.](#), Code of Laws of South Carolina (1976) and the amendments thereto; various Acts of the General Assembly; [Hander v. San Jacinto Junior College](#), 519 F. 2d 273 (5th Cir. 1975); [Kleckly v. Pulliam](#), 265 S.C. 177, 217 S.E. 2d 217 (1975); [Moye v. Caughman](#), 265 S.C. 140, 217 S.E. 2d 36 (1975); [Distin v. Bolding](#), 240 S.C. 545, 126 S.E. 2d 649 (1963); [McElveen v. Stokes](#), 240 S.C. 1, 124 S.E. 2d 592 (1962); [State v. Huntley](#), 167 S.C. 476, 166 S.E. 637 (1932); [Dillon Catfish Drainage District v. Bank of Dillon](#), 143 S.C. 178, 184, 141 S.E. 274 (1927); [Jackson v. Breeland](#), 103 S.C. 184, 88 S.E. 128 (1916).

This issue is governed, in part, by the structure of the Technical College System and the constitutional provisions pertaining to Home Rule. Both general and local provisions control the operation of technical colleges in this state. The general provisions are found in [§ 59-53-10, et seq.](#) of the Code of Laws of South Carolina (1976), as amended, which gives the State Board for Technical and Comprehensive Education (Board) certain authority over state-supported technical institutions which, in turn are given certain powers of their own.¹ Special provisions have been enacted for commissions for nine multi-county TEC colleges and six single county colleges.² The powers of these commissions vary, but most have powers which are similar to those generally given to area commissions under §§ 59-53-51 and 59-53-52. Although some of these commissions are designated as bodies politic and corporate, the Aiken and Greenville Commissions are designated as being administrative agencies of their respective counties, the Richland-Lexington Commission is designated as being an administrative agency of those counties, and the York Commission is described as being a 'public agency of a local nature';³ however, the actual powers of these four commissions do not vary significantly from those for the others. Most members of all of the commissions are appointed by the Governor upon the recommendation of members of the legislative delegations from the counties concerned except in Anderson-Oconee-Pickens in which the members are actually elected by the delegations. [See § 59-53-210.](#)

*2 [Article VIII, Section 7](#) of the South Carolina Constitution, 1895, as amended, *inter alia*, states that no law for a specific county shall be enacted. [Kleckly v. Pulliam](#), 265 S.C. 177, 217 S.E. 2d 217 (1975) stated that this ‘ . . . Prohibition only means that no law may be passed relating to a specific county which relates to those powers, duties, functions, and responsibilities, which under the mandated systems of government, are set aside for counties.’ In [Moye v. Caughman](#), 265 S.C. 140, 217 S.E. 2d 36 (1975), the court held that legislative ‘ . . . creation of different provisions for school districts does not impinge upon the ‘home rule’ amendment because public education is not the duty of the counties, but of the General Assembly.’ The court quoted and relied on that portion of [Article XI, Section 3 of the Constitution](#) which states that ‘ . . . [t]he General Assembly shall provide for the maintenance and support of a system of free public schools.’ This section also states that the General Assembly shall ‘ . . . establish, organize and support such other public institutions of learning, as may be desirable.’ Thus, these ‘public institutions of learning’ should be the responsibility of the legislature rather than the counties and should include the technical colleges.

Although, as noted above, some of the commissions for these colleges are characterized as administrative agencies, they are all units within a comprehensive system managed by a state agency, the State Board for Technical and Comprehensive Education. In providing for the appointment of the members of these single county and multi-county commissions, the legislature was acting within its [Article XI § 3](#) authority to organize public institutions of learning. Thus, the legislation does not violate [Article VIII § 7](#).

In addition, the legislation does not appear to violate the special legislative prohibitions of [Article III, Section 34\(IX\)](#). Although the court did not decide the issue, it noted in [Moye](#) that case law indicates that [§ 34](#) does not deal with matters specifically covered by [Article XI](#). For other cases which touch on this issue, see [McElveen v. Stokes](#), 240 S.C. 1, 124 S.E. 2d 592 (1962), and [State v. Huntley](#), 167 S.C. 476, 166 S.E. 637 (1932).

The question next arises as to whether the special provisions for the appointment of Commission members are consistent with Home Rule laws. [§ 4-9-10, et seq.](#), and the amendments thereto. The stated purpose of the Home Rule Act is to comply with the mandates of [Article VIII](#) of the Constitution, which includes prescribing the duties and powers of counties. Act No. 283, [§ 1](#), 1975. As noted above, education is the duty of the General Assembly, and when it has passed legislation concerning educational matters, the counties should derive no power from the Home Rule laws to act in such matters unless it is expressly given.⁴

[Section 4-9-170](#) states that, beginning January 1, 1980, councils ‘ . . . 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;’⁵ ⁶ This authority does not appear to be sufficient to give counties the power to provide for the appointment of the members of technical college commissions. That duty should continue to rest with the legislature under [Article XI § 3](#).

*3 Conclusion:

Those laws which provide for the appointment of the members of the various multi and single technical college commissions in the state appear to be valid under [Article III § 34](#) and [Article VIII § 7 of the Constitution](#) and do not appear to be in conflict with Home Rule laws; however, this question cannot be answered with certainty as to any technical college until its judicial resolution pursuant to the Uniform Declaratory Judgments Act ([§§ 15-53-10, et seq.](#), of the Code, as amended) is sought and obtained.

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Footnotes

1 Some of the powers of the Board are as follows: approval or disapproval of programs at the institutions; responsibility for the state-wide development, etc., of programs; acceptance of donations of funds, etc.; establishment of minimum and maximum tuition fees with the approval of area commissions, establishment of criteria for the justification of new facilities or the modification of existing ones (both the Board and area commissions must approve new facilities or modification of them); and establishment of state-wide

policies and procedures necessary to insure education and financial accountability for operation of the technical education institutions (area commissions may participate and provide input). All courses, programs, and institutions within the jurisdiction of the Board must be identified and administered as the South Carolina Technical Education System. § 59-53-20, as amended.

By § 59-53-51, area commissions are delegated ‘. . . primary responsibility for local governance and supervision of the individual institutions in compliance with all state laws by adoption of appropriate local policies and procedures . . .’ Section 59-53-52 gives them possession of all real property and the following powers, among others: acquisition of real and personal property; construction and equipping of appropriate facilities; acceptance of gifts, etc; preparation and submission of budgets for review; and responsibility for the operation, maintenance and improvement of institutional facilities. Although § 59-53-52 gives the area commissions the power to hire personnel, § 59-53-20 designates as state employees all personnel ‘. . . employed in the institution and programs within the jurisdiction and control of the Board . . .’ and states that no local supplements shall be made to any salaries; however, while § 59-53-57 provides for state funding of TEC schools, it does not specify that this source is exclusive.

- 2 The multi-county commissions are as follows: Anderson-Oconee-Pickens, § 59-53-210, et seq; Berkeley-Charleston-Dorchester, § 59-53-410, et seq; Chesterfield-Marlboro, § 59-53-510, et seq; Florence-Darlington, § 59-53-710, et seq; Horry-Georgetown, § 59-53-810, et seq; Orangeburg-Calhoun, § 59-53-1010, et seq; Piedmont, (Abbeville, Edgefield, Greenwood, Laurens, McCormick, Newberry, and Saluda Counties), § 59-53-1210, et seq; Sumter Area (Clarendon, Kershaw, Lee, and Sumter Counties), § 59-53-1410, et seq; and Richland-Lexington, § 59-53-1610, et seq; and the amendments thereto.

The single county commissions are as follows: Aiken, see Act 926, Acts and Joint Resolutions of South Carolina, 1962, and Act 698 of 1978; Greenville, see Act 743 of 1962, Act 193 of 1967, Act 1141 of 1968; Spartanburg, see Act 906 of 1962, Act 477 of 1969, Act 197 of 1973; Williamsburg, see Act 58 of 1969, Act 380 of 1977 and R194, S591 of 1979; and York, see Act 101 of 1963 and Act 1097 of 1979.

Technical colleges are located in Denmark and in Beaufort County (see Act 378 of 1961 and Act 283 of 1977), but, according to officials at the State Board of Technical and Comprehensive Education, these schools are totally under the control of that Board.

- 3 For Aiken, see Act 698 of 1978; for Greenville, see § 1 of Act 743 of 1968; for Richland-Lexington, see § 59-53-1610 of the Code, for York, see Act 101 of 1963. See also § 4 of Act 906 of 1962 as amended by Act 477 of 1969 which requires the Spartanburg Commission to submit its budget to the county board of commissioners; § 3 of Act 58 of 1969, which provides that all land and buildings of Williamsburg TEC are county property; and § 59-53-410 which refers to the Berkeley-Charleston-Dorchester Commission as a local agency.
- 4 This interpretation is consistent with § 4-9-70 which states that the Home Rule laws shall not be construed to give councils additional powers with respect to public education. While the statute indicates that it applies to schools no higher than the secondary level and it may have been intended to prevent litigation over the question of control of school districts, nowhere in that section or other provisions of the Home Rule Act are indications that other educational institutions should be treated differently from school districts.
- 5 Section 170 authority does not extend to school districts, special purpose districts or other political subdivisions created by the General Assembly. Apparently, no cases or opinions of this Office have considered whether a TEC school is a ‘political subdivision’ and existing definitions of the term do not indicate with any certainty that it would be classified as such. See Jackson v. Breeland, 103 S.C. 184, 88 S.E. 128 (1916) (questioned in part on other grounds Distin v Bolding, 240 S.C. 545, 126 S.E. 2d 649 (1963)); Dillon Catfish Drainage District v. Bank of Dillon, 143 S.C. 178, 184, 141 S.E. 274 (1927); Hander v. San Jacinto Junior College, 519 F. 2d 273 (5th Cir. 1975).
- 6 Note that counties have the authority to participate in multi-county projects and programs authorized by the general law under § 4-9-30(13). Thus, the question of the applicability of § 4-9-170 may be of some relevance to multi-county commissions.

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