

1977 WL 37254 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 2, 1977

*1 Senator John C. Land, III
State House
Columbia, South Carolina

Dear Senator Land:

You have posed several questions concerning the impact of Act No. 283 of 1975, the 'home rule' legislation, upon Clarendon County's county government. I shall respond to them as follows:

1. In response to your question as to whether or not Act No. 283 abolishes the office of the Clarendon County Supervisor inasmuch as that County now operates pursuant to the council-administrator form of county government, in my opinion, there is no provision in the Act for the office of county supervisor in the council-administrator form and, therefore, the intent of the legislation appears to be that that office does not exist under that form. Act No. 283 does provide, however, that:

[i]n those counties which adopt the council, council-supervisor or council-administrator form of government, all county officials whose offices were elective in the county concerned on June 25, 1975, shall continue to be elected after one of those forms is adopted, unless the council shall otherwise provide by ordinance. § 14-3718, CODE OF LAWS OF SOUTH CAROLINA, 1962; as amended (Cum. Supp.).

This provision appears to mean that in a county operating under the council-administrator form, *i.e.*, Clarendon County, the supervisor continues to be elected until the county council by ordinance provides otherwise since the supervisor was an elective office on June 25, 1975. Moreover, the county council may not be able to enact such an ordinance until at least January 1, 1980, inasmuch as the power to enact ordinances in conflict with laws relating to its respective county does not vest in the council until that date. *See*, § 14-3717, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended (Cum. Supp.). The meaning of the above-quoted language of Section 14-3718 of the Code has not yet been judicially determined and, for that reason, the opinion expressed hereinabove is certainly not free from doubt. I would strongly urge that a declaratory judgment be sought pursuant to the Uniform Declaratory Judgments Act [§§ 10-2001 *et seq.*, CODE OF LAWS OF SOUTH CAROLINA, 1962] to definitively determine whether or not that language of Section 14-3718 includes a county official whose duties are devolved upon another official or body in the council-administrator form.

2. In response to your question as to whether or not Act No. 283 of 1975 repeals Section 14-251 of the Code relating to county supervisors, in my opinion, that Act does not expressly repeal that Code section. As to whether or not Act No. 283 impliedly repeals it, while the intent of that legislation appears to me to be that the county supervisor as provided for by Section 14-251 no longer exists once a county adopts one of the new forms (except that a county supervisor already in place can serve out his unexpired term), the language of Section 14-3718 seems, at least facially, to carry forward the office of county supervisor and, therefore, prevents the working of an implied repeal.

*2 3. The Clarendon County Council cannot abolish the office of the Clarendon County Supervisor by ordinance until at least January 1, 1980, because of the language of Section 14-3717 providing:

. . . county council 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, . . .

4. An opinion on the question of the duties possessed by the county supervisor in the council-administrator form of county government is not free from doubt for the reason hereinabove stated, *i.e.*, Act No. 283 is unclear as to whether all elective offices continue in a county regardless of whether or not the powers and duties of a particular office-holder have been vested in another official or body. Assuming, however, that the office of county supervisor does continue until at least 1980, then, my opinion is that he has those duties statutorily vested in him which have not also been granted to another official or body by the provisions of Act No. 283. For example, I think that he most probably continues to have the duties vis a vis the county chain gang that are granted to him by Section 55-451 of the Code inasmuch as neither the county council nor the administrator has been expressly granted control over the chain gang. On the other hand, the authority over 'taxes and disbursements of public funds' as well as over 'all public highways, roads, bridges and ferries' granted him by Section 14-254 of the Code has been partially, if not entirely, delegated to the county council and administrator in the council-administrator form. See e.g., §§ 14-3703(5) and (8), 14-3711, 14-3712, 14-3713 and 14-3742(4) and (5), CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended (Cum. Supp.).

5. In my opinion, the county supervisor does not have authority over county employees or county equipment except as relates to the county chain gang. The hiring and firing of county employees (except those elected by the people and those employed in their offices), as well as the direction and supervision of them, is vested in the administrator subject to personnel policies, salary ranges and other powers reserved to the county council. See, §§ 14-3703(7), 14-3742(7) and (8) and 14-3745, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended (Cum. Supp.).

6. The question as to the continued validity of Section 55-451 is addressed in paragraph 4.

7. I think that the county supervisor has control of the chain gang prisoners by virtue of Section 55-451 of the Code, assuming, of course, that the office of county supervisor continues under the council-administrator form.

With kind regards,

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