

1977 WL 36972 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 21, 1977

\*1 R. Markley Dennis, Esquire  
Berkeley County Attorney  
P. O. Box 1174  
Moncks Corner, South Carolina 29461

Dear Mr. Dennis:

You have raised a question as to the respective roles of the present Berkeley County Board of Commissioners (Board) and the present Berkeley County Supervisor (Supervisor) now that the council-supervisor form of county government and the single-member district method of election have been approved for Berkeley County by the United States Justice Department. As you know, the provisions of Act No. 283 of 1975, the 'home rule' legislation, specify that once the resolution adopting the form of government selected by referendum is filed with the Secretary of State, that form then becomes immediately effective in the adopting county. § 4-9-10(a), CODE OF LAWS OF SOUTH CAROLINA, 1976. Accordingly, once Berkeley County files such a resolution, the council-supervisor form of county government will be effective therein. Until the members of the first 'home rule' council are elected in the 1978 general election and thereafter take office, however, a question arises as to the official or officials by whom Berkeley County is to be governed in the interim.

Although the matter is not free from doubt, my opinion is that the Supervisor is to exercise the powers of the governing body as prescribed by Sections 4-9-410 et seq. of the 1976 Code of Laws.

The present Board was created by 1972 legislation which prescribed its duties in part as follows:

The board shall monitor the operation of county government and advise and make recommendations to the county supervisor concerning such operations. The board shall further recommend to the county legislative delegation proposed legislation . . . and advise such delegation concerning present and future needs of the county. It shall further present to the county supervisor and the legislative delegation a proposed annual budget for the county and the necessary tax levy for implementation thereof. 57 STAT. Act No. 1619, § 4 at 3152 (1972). [Emphasis added.]

As the words hereinabove emphasized manifest, the Board was to be a purely advisory body in contradistinction to the ordinary board of commissioners which was a determinative body in certain limited areas. See, §§ 14-201 et seq. of the 1962 Code of Laws of South Carolina. That the Board was to be advisory only and that the Supervisor and the legislative delegation (the latter acting primarily by way of introducing local legislation such as annual supply acts) were to continue to be the governing bodies of Berkeley County is further borne out by the provisions of the legislation creating the Supervisor's office. That legislation was enacted in 1929 and, after abolishing the office of county board of commissioners of Berkeley County, it provided in part that: The powers and duties now exercised by and devolved upon the County Board of Commissioners of Berkeley County, and of County Boards of Commissioners and of County Supervisors under the general law of this State, are hereby entrusted to and devolved upon the County Supervisor of Berkeley County. 36 STAT. Act No. 80, § 2 at 85 (1929).

\*2 Except for amendments to the 1929 Act unrelated to the powers and duties of the Supervisor and the 1972 legislation creating the present Board, the law designating the Supervisor as the governing official of Berkeley County has remained as the 1929 enactment prescribed. The 1972 legislation did not effect a diminution in the Supervisor's powers since the Board was made advisory only; indeed, Section 6 thereof provided that its provisions were not to be construed 'to change in any manner

the powers and duties of any county officials as prescribed by law.’ Also of significance is a 1968 act which provided that, for the purpose of the Industrial Revenue Bond Act [§§ 4–29–10 *et seq.*, CODE OF LAWS OF SOUTH CAROLINA, 1976], the Supervisor and the Berkeley County Treasurer, acting jointly, together constituted the ‘governing body’ of Berkeley County. 5 STAT. 2282 (1968).

It is against this background that the conclusion as to the appropriate county official or officials to govern Berkeley County until the results of the 1978 general election can be given effect must be made.

Act No. 283 of 1975 provides that ‘[a]ll members of the governing bodies of the respective counties serving terms of office on the date on which a particular form of county government becomes effective shall continue to serve the terms for which they were elected or appointed and until their successors are elected or appointed and have qualified.’ § 4–9–10(d), CODE OF LAWS OF SOUTH CAROLINA, 1976. This language, as well as certain of the provisions of Section 3(3)(a) of the ‘home rule’ legislation and of Section 4–9–10(a) of the 1976 Code of Laws, vested whatever official or officials composed the governing body of a particular county before a ‘home rule’ form of government became effective therein with the ‘home rule’ powers once the adopting resolution had been filed with the Secretary of State. The ‘governing body’ of Berkeley County is, and has been for decades, the Supervisor. The Board is not, and has not been since at least 1929, the ‘governing body’ of Berkeley County. Therefore, the Supervisor is the only official vested with the ‘home rule’ powers during the transition period before the members of the first ‘home rule’ council are elected and qualify since he is the governing body of Berkeley County. That he thereby assumes the powers of the council which, pursuant to Act No. 290 of 1977 [60 STAT. 887 (1977)], is to be composed of eight members is not unauthorized because Section 3(3)(a) of Act No. 283 of 1975 provides in part that:

Composition of councils need not conform to the numerical requirements prescribed for the form adopted until . . . unexpired terms are completed.

While there will be problems attending the exercise by one official of powers and duties intended to be exercised by separate officials in the council-supervisor form of government, that exercise is not unauthorized in the case of Berkeley County, in my opinion. Berkeley County is probably unique in South Carolina in the organization of its pre-‘home rule’ governing body and, for this reason, it may not perfectly fit the provisions of Act No. 283 of 1975 during this transition period. Nevertheless, the South Carolina Supreme Court has recognized that latitude and pragmatism are required while the counties of South Carolina adapt to the sweeping changes brought about by the ‘home rule’ legislation. *See, e.g., Duncan v. The County of York, et al., 267 S.C. 327, 228 S.E.2d 92 (1976)*. Moreover, Berkeley County is acting correctly to ensure that the eight-member council provided for by the 1977 legislation is elected as soon as the law allows it to be, *i.e.*, during the 1978 general election, as its adopting resolution reflects. *See also, 60 STAT. Act No. 290, § 2 at 890 (1977)*.

\*3 In conclusion, I think that the present Supervisor is to exercise the powers granted to the council-supervisor form of government until his successors are elected and qualify. As I stated at the outset, however, the matter is not free from doubt because of the singular attributes of Berkeley County’s present county government. For that reason, I would recommend that a judicial determination pursuant to the provisions of the Uniform Declaratory Judgments Act [§§ 15–53–10 *et seq.*, CODE OF LAWS OF SOUTH CAROLINA, 1976] represents the only definitive resolution of the question. In that connection, I would point out that the South Carolina Supreme Court retained jurisdiction in the *Duncan v. The County of York* action ‘for such additional orders as may appear appropriate.’ *267 S.C. at 348*. Perhaps Berkeley County parties would want to consider a petition to intervene therein to obtain that court’s decision. Another alternative might be to seek by court order the holding of a special general election to elect members of the eight-member council before November, 1978.

With kind regards,

Karen LeCraft Henderson  
Assistant Attorney General

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