

1990 WL 599317 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 1, 1990

*1 C. Dennis Aughtry, Esquire
Richland County Attorney
Post Office Box 192
Columbia, South Carolina 29202

Dear Mr. Aughtry:

By your letter of September 10, 1990, you have requested the opinion of this Office as to the ownership of and right to control the Township Auditorium. Enclosed with your letter was a copy of a well-researched legal opinion rendered by one of your staff attorneys on the questions raised. Each of our questions will be addressed following a discussion of The Township's history.

Background

As noted in your staff's legal opinion, Act No. 1000, 1928 Acts and Joint Resolutions, provided for the erection, control, and use of an auditorium and community center for the Columbia Township in Richland County. That act established a board of trustees; provided for organization, regulation, powers, and the like; authorized the issuance of township bonds under the conditions specified, pledging the credit of the township; and the like. The act was subsequently amended by Act No. 651 of 1932 (affected composition of board); Act No. 1030 of 1932 (also affected composition of board); Act No. 568 of 1933 (again, affected board composition); Act No. 1121 of 1948 (use of county funds for maintenance of the auditorium); Act No. 640 (affected the composition of the board of trustees, powers and duties); Act No. 644 of 1961 (authorized board to borrow money and provided for repayment; full faith, credit and taxing power of the county pledged); Act No. 784 of 1969 (affected the board of trustees selection); and Act No. 1380 of 1966 (authorized borrowing to purchase new seating; full faith, credit and taxing power of the county pledged).

In addition, your staff attorney's opinion states that the board of The Township and Richland County Council have had financial dealings through the years. For example, in 1974, certain funds of the county were loaned to The Township, with provisions made for repayment; in 1981, the county issued general obligation bonds on behalf of The Township. Recently, the Richland County Council voted to forgive a payroll debt owed by The Township to the county.

Your staff attorney's opinion states:

The Township is ultimately maintained, governed and financed by Richland County and its taxpayers. The Richland County Council appointment of members of the Board of Trustees, the fact that the Board cannot issue bonds or levy taxes, and the local law creation of the Township Board of Trustees at a time when such was simply the manner in which to run local government in South Carolina all indicate the dependent nature of the Township. Although many factors could be considered, such indicia as herein mentioned also preclude a determination that the Township Auditorium is either a Special Purpose District or an independent Political Subdivision. (See 1984 Op.Atty.Gen. No. 84-132).

We concur with your staff attorney's conclusion that The Township and its board would most probably not be considered a special purpose district or political subdivision, but would be a county agency or department or entity.

Ownership of The Township

*2 Ownership of The Township would appear to involve both factual and legal questions. This Office is not empowered to make factual findings (see Op.Atty.Gen. dated December 12, 1983), nor have we undertaken a title search or examination of any relevant documents. Thus, we may comment only on the legal questions.

Section 3 of Act No. 1000 of 1928 authorized the Board of Trustees to “purchase land and acquire title thereto in their own name for the purpose set out in this Act” and further were given the power to erect, equip, and maintain a building as described therein. Act No. 640 of 1961 amended this provision to provide the board with power to “purchase land and acquire title thereto in its own name, its successors and assigns, for the purpose set out in this act....” We understand that property was acquired and The Township was built, but we do not know how or in whom the property is titled, facts which would be revealed by an examination of the relevant documents.

Pertinent here is Section 4-17-10 of the South Carolina Code of Laws, which provides:

Real and personal estate conveyed prior to September 26 1942 by any form of conveyance to the inhabitants of a county or district or to a committee, commissioners or other persons or existing on said date in a county or district for the use and benefit of such county or district shall be deemed to be the property of such county. And such conveyance shall have the same force and effect as if made to such county by its corporate name.

The same statute in the 1942 Code of Laws (§ 3022), 1932 Code of Laws (§ 3022), and 1922 Civil Code (§ 714), read: Real and personal estate heretofore conveyed by any form of conveyance to the inhabitants of a county or district to a committee, or commissioners, or other persons, or existing in a county or district for the use and benefit of a county or district, shall be deemed to be the property of such county; and such conveyance shall have the same force and effect as if made to such county by its corporate name.

This is more likely the version of the statute in existence when the property was acquired to build The Township.

In either case, the title or other form of conveyance should be examined to determine to whom the property was deeded, whether it was conveyed for the use and benefit of a county or district, and the like. If the terms of the conveyance are in accord with the terms of these statute, then the property may well be considered the property of Richland County.

Your staff attorney's memorandum concludes that “the Township is actually property of Richland County” and that “§ 4-17-10 of the South Carolina Code of Laws, 1976, as amended, vests title in Richland County.” This Office cannot make such a determination, having insufficient facts upon which to form a legal conclusion; your staff is obviously in a better position to research the matter and reach such a conclusion than would be this Office. If any doubt remains as to ownership of The Township property, you may wish to consider seeking a declaratory judgment to clarify the issue.

Control of The Township

*3 The acts of the General Assembly relative to The Township are detailed above. Having concluded earlier that The Township and its governing board would be a county agency or department or entity, the following from section 3 of Act No. 283 of 1975 (the Home Rule Act) is relevant:

All operations, agencies and offices of county government, appropriations and laws related thereto in effect on the date the change in form becomes effective shall remain in full force and effect until otherwise implemented by ordinance of the council pursuant to this act. Provided, however, that county councils 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 is sooner....

This portion of the Home Rule Act was scrutinized by the South Carolina Supreme Court in *Graham v. Creel*, 289 S.C. 165, 345 S.E.2d 717 (1986). Therein, an Horry County ordinance was challenged as violative of the Home Rule Act. The court examined whether a statute adopted by the General Assembly in 1959 (creating the Horry County Police Commission) was repealed by implication by the subsequent adoption of the Home Rule Act, particularly the cited portion of section 3. It was argued that as of January 1, 1980, the local law effectively expired. The court's opinion states: Appellants emphasize that the main provision states that "all operations, agencies and offices," in this case, the Horry County Police Commission," shall remain in full force and effect until otherwise implemented by ordinance of the council pursuant to this Act." 1975 Acts 692, 716-717. The proviso following this main portion prohibits county councils from enacting ordinances in conflict with existing local laws until those existing laws are repealed by the General Assembly, or until January 1, 1980, whichever occurs sooner.

The General Assembly never repealed §§ 53-551 through 53-566 S.C.Code Ann. (1962). It was not until January 1, 1980, therefore, that the Horry County Council was no longer prohibited from enacting ordinances in conflict with those sections. The Horry County Council then had three options under the Home Rule Act with respect to the operation of the Horry County Police Commission: (1) let it continue as it was being operated when Home Rule became effective in Horry County in 1976; (2) abolish the Horry County Police Department and devolve its powers and functions upon the Horry County Sheriff, subject to approval by a county-wide referendum pursuant to § 4-9-30(6) S.C.Code Ann. (1976); or (3) otherwise provide by ordinance pursuant to its Home Rule powers. The Horry County Council chose to let the Commission continue from January 1, 1980 until April 16, 1981, when Ordinance 5-81 was passed pursuant to the Home Rule Act. We find that the appellants have correctly interpreted Subsection 3 of Act 283.

*4 The Home Rule Act, while preventing the General Assembly from enacting "special legislation" and voiding any "special legislation" which contradicts the general law, does not operate retroactively to abolish all "special legislation" which was in effect in South Carolina prior to the enactment of the Home Rule Act.

Since § 53-551 S.C.Code Ann. (1962) was not in conflict with the general law, it remained in full force and effect until the Horry County Council enacted Ordinance 5-81 on April 16, 1981....

289 S.C. at 168.

Considering the foregoing, we note that the local laws relative to The Township were in full force and effect when home rule came into existence in Richland County. The General Assembly does not appear to have repealed the local legislation. Richland County Council has not enacted any ordinance subsequent to January 1, 1980, to amend or modify the local laws. It appears, therefore, that the local laws relative to The Township are still in full force and effect at this time. Based on the interpretation of the Home Rule Act in *Graham v. Creel*, Richland County Council now has two options: (1) to permit operation of The Township to continue as it presently exists under local laws; or (2) to modify the local laws relative to The Township by ordinance of council.¹ Whether to adopt such an ordinance and how to modify or amend the local laws are, of course, matters of policy within the discretion of Richland County Council.

We trust that the foregoing has satisfactorily responded to your inquiries. With kindest regards, I am
Sincerely,

Patricia D. Petway
Assistant Attorney General

Footnotes

- 1 The second option open to Horry County Council in *Graham v. Creel* is not relevant here as it related to a portion of the Home Rule Act dealing with reorganization or restructuring of a sheriff's department.

