

1976 WL 30515 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 5, 1976

\*1 A special act enhancing the home rule concept is constitutionally permissible.

Honorable Ralph King Anderson, Jr.  
Member  
South Carolina House of Representatives

QUESTION PRESENTED:

Is R888 (S986) constitutional?

AUTHORITIES:

South Carolina Constitution: Article 3, § 34; Article 8, §§ 1, 7, and 17.

[De Hay v. County Commissioners](#), 66 S.C. 229, 44 S.E. 790 (1903).

[Bray v. City Council of Florence](#), 62 S.C. 57, 39 S.E. 810 (1910).

[Knight v. Salisbury](#), 262 S.C. 565, 206 S.E.2d 875 (1974).

DISCUSSION:

R 888 (S983), an Act of the 1976 General Assembly provides:

SECTION 1. Act 1169 of 1970, as amended by Act 2 of 1973, is repealed.

SECTION 2. This act shall take effect upon approval by the Governor.

This is quite obviously a special Act, affecting only one county. Act 1169 of 1970 had created an Ambulance Service District solely for Florence County. It was governed by a Commission, whose members were appointed by the Governor.

R 888 may violate either Article 3, § 34 of the South Carolina Constitution, which prohibits special Acts, or Article 8 of the South Carolina Constitution, relating to local government. The provisions of Article 3, § 34 have been construed to allow special acts where a general law cannot be made applicable. [DeHay v. County Commissioners](#), *supra*, 237.

If R 888 is necessary to carry out the mandate of Article 8, without violating it, and general law cannot accomplish the same purpose, then Article 3, § 34 has not been violated. This premise is reinforced by the fact that Article 8, ratified on March 7, 1973, is later provision. The provisions of an amendment control in the event of a conflict with pre-existing provisions. [Bray v. City Council](#), *supra*.

Presumably R 888 will cause ambulance services to be continued, if at all, by the local governing body of Florence County, and not by a Commission, which is in effect a State Agency. In this light, R 888 strengthens the home rule concept. The South Carolina Supreme Court has made it clear that the purpose of Article 8 is to give home rule to the counties and that county government should function in the county seats, rather than at the State Capitol. Knight v. Salisbury, *supra* 571. However, may this purpose be effectuated through special acts?

Article 8, § 1 provides:

The powers possessed by all counties, cities, towns, and other political subdivisions at the effective date of this Constitution shall continue until changed in a manner provided by law. (Emphasis added)

Article 8, § 7 provides:

The General Assembly shall provide by general law for the structure, organization, powers, duties, functions, and the responsibilities of counties, including the power to tax different areas at different rates of taxation related to the nature and level of governmental services provided. Alternate forms of government, not to exceed five, shall be established. No laws for a specific county shall be enacted and no county shall be exempted from the general laws or laws applicable to the selective alternative form of government. (Emphasis added)

\*2 Article 8, § 17 provides:

The provisions of this Constitution and all laws concerning local government shall be liberally construed in their favor. Powers, duties, and responsibilities granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution.

In construing these three sections, two interpretations may be reached. On one hand, it may be said that the General Assembly may enact only general laws affecting local government by virtue of Article 8, § 7. In accord with this view is the Supreme Court's holding in Knight v. Salisbury, *supra*.

On the other hand, it may be argued that the absence of 'general law' in the emphasized portion of Article 8, § 1, reflects the intent of the framers of Article 8 that the General Assembly be allowed to use special legislation to undo all that had been done by a history of special legislation which stands in the way of home rule. This of course is a rather liberal construction of Article 8, § 1, but Article 8, § 17 would support this construction for special acts which enhance home rule, and reject it as to those which to not.

In this light, special acts which are in keeping with the intent of Article 8 are distinguishable from the ruling in Knight v. Salisbury. If R 888 had merely amended Act 1169 of 1970, it would clearly be objectionable.

Weakening this argument is the possibility that the General Assembly could have accomplished the same purpose through a general act, and by limiting the application to Florence County, it has hindered home rule for other counties. Consider a general act which would have authorized all special ambulance districts in the State to continue, until applicable county governing bodies assumed this function.

#### CONCLUSION:

Notwithstanding this last consideration, it is the opinion of this office that R 888 is constitutional, since its application will enhance home rule in Florence County. This opinion, however, is expressed with considerable doubt, and the expected ruling from the South Carolina Supreme Court on home rule in York County may have some bearing on this question.

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