

1976 WL 30534 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 2, 1976

*1 W. E. Jenkinson, III, Esquire
Attorney at Law
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Kingstree, South Carolina 29556

Dear Mr. Jenkinson:

In response to your letter of August 26, 1976, while the matters which you discussed therein are not free from doubt vis a vis Williamsburg County inasmuch as the General Assembly did not implement that County's new form of government pursuant to Sections 14-3701(a) and 14-3706 of Act No. 283 of 1975, the 'home rule' legislation, prior to its adjournment, the authority of the legislature to determine the number of councilmen and their terms of office, as well as the single member district lines, was in fact upheld by the Supreme Court in Duncan v. The County of York as a 'one-shot' proposition. The Court said:

Objection is made to the retention by the General Assembly of the power to provide for the number of councilmen, or commissioners, and the power to set terms of office for council members in each county at either two or four years, and the power to control the composition of single-member districts. As indicated hereinabove, the General Assembly has considerable plenary powers in these areas, but the Constitution prohibits dealing with these subjects on a county by county basis. The authority must be exercised over the counties on a state-wide basis, or by classifications. A law for a specific county in these areas is not constitutionally permissible except as hereinafter qualified.

This act [Act No. 467 of 1976] defines geographically the seven election districts and indicates the population of each. The act further provides that the terms of office of the members of the governing board shall be two years and that council members shall be initially elected in the general election in 1976.

Act No. 467 was approved soon after the people had selected the form of county government under which they desired their own county to operate. Although it too, like Act No. 448, is an act for a specific county, we think it constitutionally permissible as a 'one-shot' proposition, in view of § 1 of Article VIII. We cannot say that this act is not reasonably related to the transition contemplated by the new constitutional article.

In view of the fact that the Court has retained jurisdiction of the York County action 'for such additional orders as may appear appropriate,' we have advised other counties to petition the Court to be allowed to intervene as parties plaintiff for a determination as to unresolved questions. Perhaps Williamsburg County might want to follow this course and ask the Court if either its present county governing body can exercise the new powers provided for by Act No. 283 or it can remain with its present governing body until its local implementing legislation is enacted, United States Justice Department approval is obtained and the election of the new county council is held in the 1978 general election.

With kind regards,

Karen LeCraft Henderson
*2 Assistant Attorney General

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