



ALAN WILSON  
ATTORNEY GENERAL

November 20, 2017

Walter H. Sanders, Jr., Esquire  
Allendale County Attorney  
Walter H. Sanders, Jr., P.A.  
Post Office Box 840  
Fairfax, SC 29827

Dear Mr. Sanders:

Attorney General Alan Wilson has referred your question dated October 16, 2017 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

**Issue** (as quoted from your letter):

*"A consolidation commission has been appointed to study the potential for consolidating the various county and municipal corporations pursuant to Chapter 5 of Title 9 of the South Carolina Code of Laws. As Allendale County Attorney, I have been requested to advise the Commission members. A question has arisen as to whether the Commission continues to have the legal authority to continue studies and drafting of a proposed consolidated government charter. ... By way of background, The Commission was appointed by Allendale County Council after the receipt of a citizen petition pursuant to S.C. Code Section 4-8-20. Allendale County contains no special purpose districts, but does have four municipal corporations within the county; Allendale, Fairfax, Sycamore and Ulmer. None of these municipalities extend beyond Allendale County. All members of the Commission were appointed by Allendale County Council after the municipal councils refused to appoint members. ... The Commission has been informed by each of the four municipalities that pursuant to S.C. Code Section 4-8-95(A) the municipal councils have affirmatively voted to be excluded from the consolidation effort. That Code section provides:*

*SECTION 4-8-95. Election of city or special purpose district to be excluded from consolidation.*

*(A) A special purpose district or city may elect to exclude itself from consolidation.*

*As stated earlier, there are no special purpose districts. The election of the municipalities to exclude themselves from the consolidation effort leaves only the county government remaining. The consolidation statute itself provides no guidance to a commission on how to continue where there are no subdivisions or municipalities willing to participate. The Commission now questions whether they have the legal authority or the ability to move forward with their statutory mandate to complete the required studies and drafting of a proposed charter. The 12-month deadline expires in January 2018 and the Commission now needs to determine if they will need to request an extension of time from county council. Additionally, should the Commission be able to legally able and willing to continue they will be required to hold at least three public hearings. ... If the Commission no longer has a legitimate goal, the time and*

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*expense to complete studies, hold public hearing and draft a charter for non-existent entities appears to be a needless waste. Therefore, I am seeking an opinion on the following question:*

*1. Is the Allendale consolidated government commission lawfully authorized to continue consolidation studies, and drafting of a proposed charter where all municipal corporations have voted to be excluded from the consolidation effort, and there are no special purpose districts in the county?"*

**Law/Analysis:**

In your letter, you quote a portion of South Carolina Code Ann. § 4-8-95. The entire statute states that:

(A) A special purpose district or city may elect to exclude itself from consolidation.

(B) In each election held pursuant to this chapter, votes cast must be counted and recorded by municipality and by special purpose district. A majority vote in opposition to the consolidation from the municipality or special purpose district must be construed as a decision to be excluded from consolidation.

S.C. Code Ann. § 4-8-95 (emphasis added). As you see section (B) of the statute references an "election held pursuant to this chapter." Id. The referenced chapter is Chapter 8 of Title 4. Id. The beginning of Section 4-8-80 describes the election "not more than thirty days after the receipt of the certified copy of the proposed charter, the governing body of the county shall call for an election for the purpose of submitting the question of consolidation and the proposed charter to all of the qualified voters of the county including those residing in municipalities continued by the charter for approval or rejection." S.C. Code Ann. § 4-8-80. Section (2) of the following code section states that "(2) [i]f the charter for the creation of a consolidated political subdivision is approved by the qualified electors of the county as required by item (1) of this section but not approved by a majority of the qualified electors voting on the question in a municipality or special purpose district, the charter is void and of no force and effect only in that municipality or special purpose district." S.C. Code Ann. § 4-8-90(A)(2). This Office previously opined that references within the act include "how a municipality may exclude itself by vote of its electorate." See Op. S.C. Att'y Gen., 1992 WL 682859 (S.C.A.G. November 23, 1992).

Thus, let us examine the statutes. As a background regarding statutory interpretation, the cardinal rule of statutory construction is to ascertain the intent of the General Assembly and to accomplish that intent. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003). The true aim and intention of the Legislature controls the literal meaning of a statute. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). The historical background and circumstances at the time a statute was passed can be used to assist in interpreting a statute. Id. An entire statute's interpretation must be "practical, reasonable, and fair" and consistent with the purpose, plan and reasoning behind its making. Id. at 816. The dominant factor concerning statutory construction is the intent of the Legislature, not the language used. Spartanburg Sanitary Sewer Dist. v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984) (citing Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956)). In reading Chapter 8 in its totality, we believe a court will find that a governing body cannot exclude itself preemptively without having an actual "proposed charter" to vote on as referenced in South Carolina Code Ann. § 4-8-80 and § 4-8-90(A)(2). To do otherwise would defeat the entire purpose of a "proposed charter." S.C. Code Ann. § 4-8-80; § 4-8-90(A)(2). Moreover, this Office believes it is the "qualified electors" who vote "on the

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question [of a proposed charter for the creation of a consolidated political subdivision] in a municipality or special purpose district” as opposed to a municipal council. S.C. Code Ann. § 4-8-90(A)(2); Op. S.C. Att’y Gen., 1992 WL 682859 (S.C.A.G. November 23, 1992).

**Conclusion:**

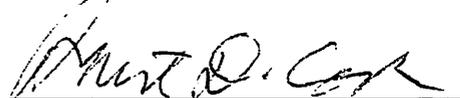
While this Office acknowledges that reading S.C. Code Ann. § 4-8-95(A) by itself one might arrive at the conclusion that a city council may preemptively vote to exclude itself from consolidation, we believe a court will determine that in reading Chapter 8 in totality that a governing body cannot exclude itself preemptively without having an actual “proposed charter” to vote on as referenced in South Carolina Code Ann. § 4-8-80 and § 4-8-90(A)(2). Additionally, this Office believes it is the “qualified electors” who vote “on the question [of a proposed charter for the creation of a consolidated political subdivision] in a municipality or special purpose district” as opposed to a municipal council. S.C. Code Ann. § 4-8-90(A)(2); Op. S.C. Att’y Gen., 1992 WL 682859 (S.C.A.G. November 23, 1992). Thus, we believe a court will conclude that the Allendale consolidated government commission should continue with its statutory duties unless and until the electors of all municipal corporations (or applicable governing bodies) have voted against consolidation pursuant to a proposed charter in accord with South Carolina Code Ann. § 4-8-80 and § 4-8-90(A)(2). However, this Office is only issuing a legal opinion based on the current law at this time and the information as provided to us, and we also suggest consulting with the South Carolina State Election Commission. This opinion is not an attempt to comment on any pending litigation or criminal proceeding. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. This opinion only addresses some of the sources in the subject area, but we can address other authority or additional questions in a follow-up opinion. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code § 15-53-20. If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

Sincerely,



Anita (Mardi) S. Fair  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General