

1975 WL 29604 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 20, 1975

\*1 The Honorable Thomas E. Smith, Jr.  
Senator  
100 Walnut Street  
Pamplico, South Carolina 29583

Dear Senator Smith:

Thank you very much for your letter of March 13 asking whether a proposal to make certain changes in the statutes relating to the Civil and Criminal Court of Florence County would be constitutional. The changes are generally referred to by you as including amendments which would require the Solicitor to transfer indictments as he wishes to the County Court and to notify the defendant of the same by mail; to delete from the existing law the provision which allows the defendant to transfer the case back to the General Sessions Court; and to change the procedures for utilizing jury panels by combining the panel for the Civil and Criminal Division of the Court, plus other unidentified changes.

It is my opinion that such changes would not be constitutional in that a general law would be required in order to avoid the prohibitions of Article V of the Constitution.

Section 1 of Article V provides, in part:

‘The judicial power shall be vested in a unified judicial system—which shall include such other courts of uniform jurisdiction as may be provided by general law.’

Section 22 of Article V provides:

‘Notwithstanding the provisions of this Article, any existing court may be continued as authorized by law until this Article is implemented pursuant to such schedule as may hereafter be adopted.’

In my opinion, this latter section would authorize the continuance of the Civil and Criminal Court of Florence County, but it must continue as it now exists until changed by general law.

This Article has not yet received construction by the Supreme Court of South Carolina and I fully recognize that any opinion expressed is necessarily subject to some reservation. A case is now pending before the Supreme Court of South Carolina in which the application of the section of the Constitution last set forth above will undoubtedly be construed. In that case, the statute relating to appeals from the Pickens County Court and which changed the appeal procedure so as to provide for a direct appeal to the Supreme Court from the Pickens County Court rather than to the Circuit Court, and thence to the Supreme Court, is involved. The Supreme Court, in that case, on its own motion, requested briefing and argument on the validity of such a change which had taken place since the ratification date of Article V. The matter was heard at the last term of the Supreme Court and its resolution will tend to make certain the types of changes, if any, which may be permitted under the new constitutional provision. The fact that the Court itself raised the question of the validity of such a change indicates to me that they are most seriously concerned about amendments of statutes relating to the courts which are now existing by special law rather than by general law. The change involved in the Pickens County Court is of a fairly similar nature to the changes proposed for the Civil and Criminal Court of Florence County.

\*2 Unless the Supreme Court declares otherwise, it is my opinion that changes in existing courts can only be made be general law and, for this reason, it is my view that the amendments to which you have referred cannot be constitutionally adopted.

With best wishes,  
Very truly yours,

Daniel R. McLeod  
Attorney General

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