

1975 WL 28879 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 4, 1975

\*1 Ray Williams, Esquire  
Post Office Box 1027  
Beaufort, South Carolina 29902

Dear Mr. Williams:

You have requested an opinion from this office as to whether or not Sections 59-626, et seq., Code of Laws of South Carolina, 1962, as amended, have been impliedly repealed by new Article VIII of the South Carolina Constitution, Section 16 of which provides in part:

Any county . . . may, upon a majority vote of the electors voting on the question in such county . . ., acquire by initial construction or purchase and may operate water, . . . systems and plants . . .

Our opinion is that Sections 59-626, et seq., remain in force and provide a constitutional method of creating rural water districts. First, if a county, acting pursuant to Section 16 of Article VIII, seeks to operate a less than county-wide water system, general county tax funds cannot constitutionally be expended therefor. See, e.g., Moseley v. Welch, 209 S.C. 19, 39 S.E.2d 133; Mills Mill v. Hawkins, 232 S.C. 515, 103 S.E.2d 14. Moreover, that part of Section 7 of Article VIII which authorizes counties to tax different areas at different rates of taxation related to the nature and level of governmental services provided is not self-executing and contemplates the passage of legislation similar to the 'home rule' bill to be effective. In the meantime, counties cannot constitutionally add to those powers vested in them prior to the March 7, 1973, ratification of new Article VIII. See, art. VIII, § 1, S.C. CONST., Neel v. Shealy, 261 S.C. 266, 199 S.E.2d 542; Knight v. Salisbury, 262 S.C. 565, 206 S.E.2d 875. Finally, the above quoted language of Section 16 may be directory rather than mandatory and, thus, may allow for other methods, such as by way of Sections 59-626, et seq., to provide water services within a county. Because of the conclusion reached as to the present validity of Sections 59-626, et seq., however, it is not necessary to resolve this last question.

With kind regards,

Karen LeCraft Henderson  
Assistant Attorney General

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