

1974 WL 27618 (S.C.A.G.)  
Office of the Attorney General  
State of South Carolina  
January 31, 1974

\*1 The Honorable Gary E. Byrd, Jr.  
Member  
House of Representatives  
Darlington County  
Route 1  
Box 247  
Hartsville, South Carolina 29550

Dear Mr. Byrd:

Your letter of January 30, 1974, requests my opinion as to whether the Acts set forth below are valid, enforceable, and constitutional as of the date of ratification of the local government amendment to the State Constitution:

Section 2 of Act No. 369 of 1963. This Act requires that the Annual Budget for Darlington County is subject to amendment and approval by the County Legislative Delegation. It was approved June 11, 1963. It was amended by Act No. 1299 of 1968 so as to provide that the County Manager shall be appointed by the Governor upon recommendation of the County Legislative Delegation. That Act was approved June 14, 1968.

Act No. 979 of 1962. This Act provides for the appointment of an Auditor for Darlington County by the Legislative Delegation of the County. It was approved April 16, 1962.

Act No. 946 of 1962. This Act provides for the appointment of a County Legal Advisor for Darlington County by the Legislative Delegation of the County.

All of the above Acts were enacted prior to March 7, 1973, which is the date of the ratification of the local government amendment.

Under the authority of Neel v. Shealy, et al., decided by the Supreme Court of South Carolina September 25, 1973, it is clear that none of these Acts are affected by the prohibitions contained in the local government amendment against the enactment of special legislation. I express no opinion as to whether they may be unconstitutional or invalid upon other grounds.

You also inquire:

'Does the exercise of the above powers by the Darlington County Legislative Delegation amount in effect to the power to write an annual appropriation act by such delegation?'

In discussion with you, you have indicated that your concern is with respect to the application of the manner of selecting forms of government as presently set forth in the draft of a bill to provide for county government in implementation of the local government amendment. As presently worded, the draft provides that selection of a form of government shall be made by the governing body of the county in those counties where the authority 'to determine the budget' for the operation of the county has been granted to that body. In those counties where the quoted powers have been retained by the county legislative delegation, the selection made by the governing body shall become effective only upon approval

of the legislative delegation. Therefore, the question is whether or not the power to ‘determine the budget’ in Darlington County has been retained by the county legislative delegation.

I have been advised by participants of the committee now preparing the draft of the bill to be submitted to the General Assembly that the phrase quoted herein was initially proposed to read, ‘to levy taxes and appropriate funds for the operation of the county government’, and that the present phraseology ‘determine the budget’ was utilized in view of the fact that at least one county (Aiken) vested the legislative delegation with authority to approve any increase in taxes.

\*2 In my opinion, the authority to ‘determine the budget’ for Darlington County means not only the initial fixing of the budget, but also includes all final authority with respect thereto. The County Council for Darlington County does not, at the present, have such final authority, in that its budget is subject to amendment and approval by the legislative delegation. Therefore, if the phraseology which is presently employed in the bill is ultimately adopted as a statute by the Legislature, it will, in my opinion, subject the selection of the form of government made by the governing body to the approval of the county legislative delegation. I express no opinion as to the validity of the powers given to the legislative delegation by Section 2 of Act No. 369 of 1963.

Very truly yours,

Daniel R. McLeod  
Attorney General

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