

1974 S.C. Op. Atty. Gen. 159 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3783, 1974 WL 22433

Office of the Attorney General

State of South Carolina

Opinion No. 3783

May 16, 1974

*1 Special legislation providing for one of the various forms of county government for Allendale County is unconstitutional.

Member, House of Representatives
Ulmer, S.C.

You have requested an opinion as to the constitutionality of legislation which would provide, for Allendale County, one of the five forms of county government contemplated by Article VIII, Section 7 of the South Carolina Constitution.

Article VIII, Section 7 provides in pertinent part:

The General Assembly shall provide by general law for the structure, organization, ... of counties, Alternate forms of government, not to exceed five, shall be established. No law for a specific county shall be enacted....

The Committee to Make a Study of the Constitution of 1895, which was the group charged with the responsibility of either proposing modifications of the 1895 Constitution or recommending a new state constitution, intended that the General Assembly enact legislation, general in form, establishing five alternate forms of county government. Final Report of the Committee to Make a Study of the South Carolina Constitution of 1895, Comments G and H at 87. The General Assembly has acted accordingly by introducing a bill, bearing Senate No. 789, which provides for five different forms of county government and, more specifically, for the precise form to be adopted by each county if the county governing body does not determine its own form by July 1, 1975. Section 6, Senate Bill No. 789.

When this bill, or a similar one, is finally enacted, the governing body of Allendale County, after at least one public hearing, will adopt one of the forms provided for. Until such time as the legislation authorizing the alternate forms of county government is enacted, however, the General Assembly cannot authorize a change in the existing form of government of Allendale County; an attempt to do so by special legislation would, in our opinion, violate the provisions of Article VIII, Section 7 of the South Carolina Constitution.

Additionally, Section 1 of Article VIII provides:

The powers possessed by all counties, cities, towns, and other political subdivisions at the effective date of this Constitution shall continue until changed in a manner provided by law.

This office has, in the past, interpreted this language to mean that counties possess only those powers which they had as of March 7, 1973, and that any change therein must be accomplished by general law. Letter to Senator William Doar dated June 5, 1973.

For the foregoing reasons, the opinion of this office is that special legislation providing for one of the various forms of county government for Allendale County is constitutionally proscribed.

Karen LeCraft Henderson
Assistant Attorney General

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