

1974 S.C. Op. Atty. Gen. 250 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3841, 1974 WL 21344

Office of the Attorney General

State of South Carolina

Opinion No. 3841

August 12, 1974

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

Dear Senator Smith:

You have requested an opinion as to whether the recent South Carolina Supreme Court decision in Knight, et al. v. Salisbury, et al., (Opinion filed June 17, 1974), has rendered unconstitutional legislation such as that which would change the authority and membership of the Florence City-County Agricultural Commission. An earlier opinion from this office, rendered before the Knight decision, concluded that such legislation would most probably not be violative of new Article VIII of the South Carolina Constitution.

While the Knight decision was, in effect, a 1–2–2 one and, thus, may possess a somewhat questionable precedent value, it, nonetheless, represents the only judicial interpretation of Article VIII, Section 7, to date. Mr. Justice Littlejohn, in the Court's opinion, wrote:

Construed together, Section 1 and Section 7 simply mean that existing political subdivisions should continue to function as authorized by law on March 7, 1973, when Article VIII was ratified. (Slip Op. at 9.)

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. [Emphasis added.]

A political subdivision has been defined as follows:

Attributes generally regarded as distinctive of 'political subdivision' are that it exists for purpose of discharging some function of local government, that it has prescribed area, and that it possesses authority for subordinate self—government through officers selected by it. [Citation omitted.] 32A WORDS AND PHRASES at 59 (1974 Supplement).

The term is broad and comprehensive and denotes any division of a state made by the proper authorities thereof, acting within their constitutional powers, for the purpose of carrying out those functions of the state which by long usage and inherent necessities of government have always been regarded as public; . . . 72 C.J.S. Policial at 223.

See also: Jackson v. Breeland, 103 S.C. 184, 191, 88 S.E. 128 (1915); Easler v. Maybank, 191 S.C. 511, 5 S.E.2d 288, 290 (1939); Berry v. Milliken, 234 S.C. 518, 525, 109 S.E.2d 354 (1959).

The Florence City-County Agricultural Commission was created as a body politic pursuant to Sections 3–267 et seq., of the South Carolina Code of Laws, 1962, as amended, and is charged with various functions relating to agriculture in Florence County. The Commission is, therefore, in our opinion, a political subdivision whose powers cannot constitutionally be altered by the type of legislation proposed. See also: Neel v. Shealey, 261 S.C. 266, 199 S.E.2d 542 (1973).

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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