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Legal Aspects of Home Rule

by

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It is very difficult to talk about the legal ramifications of this piece of legislation because of the fact that it is an absolutely new field of the law in South Carolina. Those of us who are lawyers usually expect advisement on the basis of prior interpretations by the Supreme Court — how they defined certain terms and how we can relate that to our current situation. But, of course, in this case we are talking about an entirely new field of law and we are all going to have to be on a first term basis in dealing with this piece of legislation.

I would like to make a couple of general observations, if I may. First off — I am not here as an instructor. I am not here as a sage, as anyone can see. I am here probably more in the capacity of being an apology for this piece of legislation. It is not good and I will be the first to admit it, but I hope you will understand that the reason it is not good is because we are dealing with roughly 107 different viewpoints. But we are dealing in the General Assembly with many divergent interests: The large counties against the small counties in some respects, Power Companies and the Co-ops and the municipalities, the urban areas as opposed to the rural areas. You can read this bill and look at the many sections in which a rather clear, concise, easy to follow piece of legislation is followed by as many as two, three, or four provisos. We are trying to take care of the situations in which various legitimate special interests need to be cared for.

One further observation is this: you should disabuse yourself immediately of the idea that there are five different forms of county government. That simply is not true. The first four forms are identical. The only thing we have done is to change the nomenclature. We call some of them supervisors; we call some of them administrators; we call some of them managers; but the fact remains there is a basic form of government — an elected council and an administrative officer. The only truly different form is the fifth. It is an alternative to the council-administrator type of government and it is quite different. The legislative delegation of the county will have the say so over the taxing and

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spending of the people's money. While I supported the inclusion of the fifth form as one of the five alternatives, as a lawyer I suspect it will be declared unconstitutional by our Supreme Court, because to implement the fifth form requires the legislative delegation to take an action which is itself prohibited by Article VIII.

Now, the municipalities face the same situation, and that is the three forms provided them are not truly different. You again have the different nomenclatures, but it boils down to a council and mayor and an administrative officer who will run the town. So now I am just suggesting that you do not get uptight about your choice of these forms. There are but minor differences.

Probably the foremost area for real legal concern relative to this bill is an area in which almost every citizen of South Carolina is interested, and that is our dealing with the Federal Government at the Justice Department level. All of you are probably generally familiar with the Voting Rights Act of 1965. It provided that any election law change in certain southern states and a few counties in other states had to be submitted to the Attorney General for his approval. I suspect that the matter was put to the Congress on the basis of minorities in the southern states being prohibited from voting, and we needed to correct that. However, as you are aware, our Attorney General has promulgated regulations which would swamp the Voting Rights Act. He has more regulations about the Voting Rights Act than the Act has itself.

Under these regulations which have been basically upheld by our courts and judges, he has arrogated himself the right to pass on anything which any of these subjected states do regarding any election of anybody at any time. So obviously we qualify for the honor of being covered by the Voting Rights Act. This legislation has already been sent to the Attorney General of the United States. We have already received his tacit approval of this bill — inasmuch as he has said that we do not interpose any objection at this time. We may proceed with it. However, every county in South Carolina, every municipality in South Carolina must submit the form of government which they choose — by whatever means — to the Justice Department to determine if it meets the Voting Rights Act requirements. So I can envision potential years if the Justice Department wants to scrutinize closely the plans in each county and each town in South Carolina before they allow us to go forward with the full implementation of that form of government.

We also face the problems of the 14th Amendment — not with

the Justice Department — but with the Federal District Courts because you have got to apportion single members districts or wards on a reasonably close population basis. So you can see that you have not only geographic problems, but the make-up of that number of people — perhaps black, white, Puerto Ricans, Indians, whatever we have that is a minority race.

Another area of legal concern is the language contained in the first section of our bill that provides for the referendum, the choosing of the form of government, and then the last sentence is this: "The General Assembly shall provide for the number of councilmen or commissioners — in the event that the members of the governing bodies are required to be elected from a single member district." There is another section in this bill which states that the General Assembly shall set the terms for commissioners. Therefore we are put in a position of asking the people to choose the area representation that you wish — whether a single member or at-large — then turn it back over to us to devise the district, to provide the terms, and to provide the number of councilmen that you shall have in that form of government. We have devised a vicious circle here because in order for the General Assembly to pass an act setting up terms and composition and so forth for a given County, we are violating the very Constitutional amendment that we are trying to implement when the law states that no law shall be made for a particular county.

Section 14-37-14 says that the council shall provide by ordinance for all county boards, commissions, and commissioners whose appointment is not provided for by the general law or the Constitution of the State of South Carolina. A further section provides that beginning in 1980 the council shall provide for the appointment for all councils. There is a very serious question as to what present county boards and commissions are now provided by the general law of South Carolina. Back through the years the General Assembly has adopted many pieces of legislation providing, in effect, that each county shall have a hospital board, a registration board, welfare board and recently a drug and alcohol abuse commission. Now that is general law because it applies to all the counties in the state. However, many of the counties have provided for the individual method of appointment of their members of these commissions and boards. Thus it becomes less than general law and therefore subject to appointments being made by the County Council members.

During the debate over the section in the General Assembly, there were many people who approached it from a personal standpoint, most

of them senators who wanted to retain the rights to make these appointments. We had hoped to be able to put in this bill language so that the county councils would be allowed to make these appointments to new boards and commissions which they have the authority to create but which would not overlap with duties of those already in office. Now I have come to the conclusion that these appointments probably ought to be made by the councilmen because heretofore our concern as members of the legislature with the operation of the hospital and operation of the welfare department was because of our responsibility for the way the money was being spent.

There is also a potential problem for county commissioners in regards to the creation of special service districts. This section allows each of the alternate forms of government the powers of creation of any special tax districts, and it sets out the procedure for doing it. However, another provision in this act states that provisions of this chapter, which includes the entire area shall not be construed to include any additional powers upon county council with regards to public service districts which are in existence on the date the form of government becomes effective in a particular county. In the areas in which you already have a public service district the first thing to do, I assume, would be to expand *that* one. So the one section gives the county council the right to set up these special service districts and the next section prohibits the devolution of any powers to the county council on existing special service districts in the counties today.

There is another provision in both the municipal and county sections which may cause problems, and that is the referendum and initiative provision. The initiative for a new ordinance or the initiative to repeal an existing ordinance can be put forward by 15% of the registered electors of the political subdivisions. If the form of government chosen, or if the councilmen chosen do not suit a certain political group of people they would be legally entitled to put a petition up every day of the year. Under the present state of this law the county council or the municipal council must call for an election on that petition, and if you have a determined enough and obstruction-minded enough 15% of the people they could destroy the government because it costs a great deal to have those elections and it does present areas for abuse.

We have got a problem in the education section of this bill. There have been some recent rulings by the Supreme Court in which they say that the General Assembly may, in fact and probably should, control public school education in the county. This is one of the areas

in which apparently we are going to be able to continue to legislate law for specific counties only in the field of education.

Those of you in the municipal area are well aware of the legal implications of this bill in that your annexation laws will remain the same. The annexation law is set for a special order in the Senate when we convene the second Tuesday in January [1976], and I hope that we will make some resolution of the problem.

Finally, all municipal and county government will now be exposed to reapportionment. Every ten years, your councils, which are on a single member district basis must be reapportioned. You must do it then to conform both to the 14th and 15th Amendments and to the Department of Justice. When the new census comes out, those of you who have been amused at the plight of the General Assembly in trying to reapportion, and those of you who have commiserated with us will get to enjoy the exact same benefits in doing it yourself. I hope it will not be as traumatic as it has been with us in the General Assembly.