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## Constitutional Aspects of Home Rule

by

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I would like to state that in my opinion this subject of Home Rule or local government should not be an emotional issue, and if we can get all of that out of the way to start with and then try to approach it in a systematic common-sense way, then I think we can take a lot better look at it. When I spoke to a group in Greenville that was rather hostile towards any form of Home Rule or any form of change in this direction, I began by citing Edmund Burke who said that manners are more important than laws. Now I know that this is not a hostile crowd, but I think that an important thing is to get all of the emotions out of the way and try to look at it in a sense that we can best serve the people.

In our initial discussion on Home Rule or local government, I would like to touch on the constitutional situation of 1868. The Constitution of 1868 was the one that came out of the Civil War, and as I understand was borrowed from Ohio, which had a very good Constitution. The government of South Carolina then took this as a uniform type of Constitution and adopted most of the provisions, and it was a good Constitution. It had a proviso in it for local government which was very sound. Now let's look at what a Constitution is. The Constitution of the United States represents the people's voice or, in other words, the power residing in the people and expressed through this written document, the United States Constitution. It is a grant of power — an expression of power. It gives power and it says without being too elemental that the United States will have certain specified powers and then they are listed. All other powers are reserved in the states, so the states then have a portion of the sovereignty of the United States Government. They are a part of the United States government.

So then, we received our power in South Carolina from the United States Constitution. Then we formed a State Constitution here in South Carolina. So is it a grant of power? Does it say then that this power is granted to this, and so forth? It does not because the only power we receive, we receive from the United States Constitution. So the State Constitution is a description of power, a division of power, a limitation

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of power in the various departments of state government. And that is important when you look at what the Constitution means because the State Constitution does not grant power. It is a division of power. The State Constitution of 1868 also says the qualified electors of each county shall elect three persons for the term of two years who shall constitute a board of commissioners, which shall have jurisdiction over roads, highways, various bridges and in all matters relating to taxes, and the disbursement of money for county purposes, and in every other case where it may be necessary to the internal improvements and the local concerns of the respective counties.

Now that would be a right good Home Rule provision in our Constitution, because that is a very broad description of what the powers of local governments are going to be at the county level, but that was repealed in 1890. Then we had the 1895 Constitution, which, of course, is the one which we have lived under for a number of years up until the recent effort to revise it. The 1895 Constitution has some things in it about the county government, but as far as what the county governments can do or cannot do, there is no language to that effect. We therefore have basically no constitutional county government at this point. They recognized there is such a thing. The provisions under the 1895 Constitution, not only eliminated anything about the powers to the county, but very carefully avoided any language to that effect, leaving the seat of power in the State General Assembly — absolutely.

Now, how did you run your county government? Obviously you had to have it, but, of course, at this point it was usually handled by a local legislative delegation. Having one Senator per county and the House members all coming from the same county was not a bad arrangement for county governments. Of course, many of the complicated complex issues of state government were not on the hearts and minds of the legislators. That worked very well over the years, especially in the smaller counties, but as populations grew and problems became more complex, then the competition started to rise and the people recognized the need for county governments. Rather than have the legislative delegation, whose first responsibility was state government, handle county affairs, they started creating by statute county councils across the state. However, they gave different county councils different authorities with no uniformity whatsoever.

On top of this, we now get into the matter of reapportionment. In 1966, under the case of *Reynolds vs. Sims*, it says that you can not have one senator per county on the state level like you do two senators on the federal level because, as I said in the beginning, states have

some of the sovereignty of the Federal government. So it is very legitimate to have the same number of United States Senators in New York as it is in South Carolina, or as it is in California — because we share the same one-fiftieth of the sovereignty of the United States. But Greenville county has none of the sovereignty of the state of South Carolina, nor does Greenwood, nor does McCormick or any other county, because the counties are simply election district lines. This is because the State Constitution is not a grant of power. The counties are simply election districts for the convenience of holding elections, electing people and providing services. So then, the one senator per county goes out the window and you have senators representing several counties and that complicates things.

Then we get to further complications in the single member house districts which eliminated the possibility of legislative delegation control of county government, because district lines may cross over county lines.

The Study Committee for the revision of the Constitution recommends new Article VIII. New Article VIII is hopefully answering the question of filling the gap and also providing for the future operation of the county. We also have other sections that are involved — Article X, the county purposes doctrine, and Article III, the legislative article, which also touches on this question of local governments.

Article VIII, I think, is an excellent constitutional provision. It sets up the general framework of local government — and notice I did not say Home Rule. Though we use the term — and it is a very good term — the framework that is set up by Article VIII is not Home Rule. It is local county governments subject to the general laws of the state of South Carolina. From the municipal standpoint, it is not Home Rule — it is local city governments subject to the general laws of the state of South Carolina and the Constitution of South Carolina. Those are two very important things to remember because we are not talking about a “carte blanche” spreading of power, but we are talking about a very systematic, sensible way of handling local government’s affairs. And that is to say that the state government is responsible for the general law, i.e., the general protection. All counties are the same; all cities are the same. Article VIII, Section 7, describes in good general constitutional terms:

The General Assembly shall provide by general law for the structure, powers, duties, functions and the responsibilities of counties including the power to tax different areas at different rates of taxation related to the nature and level of government services provided. Alternate forms of government not to exceed

five shall be established. No laws for a specific county shall be enacted and no county shall be exempted from the general laws or laws applicable to the selected alternative forms of government.

That is a very broad and good constitutional provision in my opinion. It says that the General Assembly should do these things. The Constitution does not proceed to do it, but instructs the General Assembly to provide these guidelines for county governments for the development of their powers and functions.

Section 9 says basically the same thing about cities along with Section 10. And let me point out Section 14 which says that no matter what the General Assembly does in terms of power to the counties and cities, it can not under the State Constitution pass general laws that permit a government to effect these things:

1. A person's general right to freedom.
2. Election and suffrage qualifications.
3. Bonded indebtedness of the governmental units.
4. The structure or administration of the state's judicial and court system.
5. Criminal laws and penalties and sanctions for transgressions thereof.
6. The structure or administration of any governmental service or function, responsibility for which rests with the State Governor.

So within the Constitution you have those basic safeguards repeated, and it says that not even the General Assembly can permit the counties to get involved in those functions. Article XVII then says that in determining what a county can do in relation to the other provisions of the Constitution, it should be liberally construed.

As I see it we are attempting to define in a very simple way the state government with certain state responsibilities and certain other governments with responsibilities subject to the State or the Constitution. Then when the people go to the polls and vote, they will know who did what and why. And I think that one of the real frustrations now with the government on every level is that the vote is not necessarily where the power is. People do not understand how to get to the issues and to the decision-making centers.

Now those of us working on the Constitution are thinking about the court system. Justice is a state responsibility, and it is my job as a State Legislator to see that a fellow gets justice in Charleston county just as it is in McCormick county. The Federal Constitution protects individual rights, but 90% or more of the justice in this country is handled by the states. And this is not a local function either. Local people have to get the job done, but the responsibility lies with the state. And under Article V of the Constitution, it says that we are going to have a unified court system and that is a state job.

Then we get over to Article VIII and you say — how about local government. Is that a state job? I do not think so because the Constitution attempts to say that the local issues should be decided by local people in the democratic process, subject to the general protection of the general laws.

Now, how about education? We have attempted to keep education out of the local government article, but it is in there in a kind of mixed-up section. There you get into a transition time and there are a lot of things that still need to be worked out. But I think education is a state responsibility, and I think it is up to the State of South Carolina to see that a child in Horry county has a good education. He should have basically the same education as a child in Greenville county. This is a state function and I do not believe that the people in local government should be involved directly in educational matters. So when you get these things outlined and the people understand what's what and what responsibility belongs to whom, the whole thing fits into place. And hopefully we end up with a more simple system of state government, of local government, of school districts and responsibilities and of the court system.