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G. P. Callison

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## Local Government

Under Act No. 283 of The South Carolina General Assembly

Approved June 25, 1975

Home rule

by

G. P. CALLISON\*

### LEGAL BACKGROUND

When the South Carolina constitution of 1895 was adopted, the state was mostly rural on demography. Only a few municipalities had been established to provide such services as improved streets, electricity, sewage, water, police protection, and educational facilities. Counties maintained roads and these were often maintained by chain gangs.

County government was comprised of an elected board of commissioners from each township, with the supervisor elected at large and serving as chairman of the board, but with no legislative powers.

The 1895 constitution limited the bonded debt of any county, township, school district, municipal corporation or other political subdivision to eight percent of the assessed value of all taxable property therein. These governmental units subsequently found themselves unable to provide the services demanded of them. The Highway Bond Act of 1929 provided some relief in providing for \$65,000,000 of bonds, a gasoline tax, and the full faith and credit of the state. One cent of the six cents per gallon tax was to go to the counties. Special Service Districts were also created from time to time to provide water, sewage, and other services. The Revenue Bond Act for Utilities of 1933 provided that counties and municipalities could issue revenue bonds in order to provide these services.

### THE NEW DIRECTION

Revised Article VIII provides a new direction for local government. Section 7 reads in part:

The General Assembly shall provide by general law for the struc-

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\*County Attorney, Greenwood County.

ture, organization, powers, duties, function, and the responsibilities of counties, including the power to tax different areas at different rates of taxation related to the nature and level of governmental services provided.

Section 17 reads in part:

The provision of this constitution and all laws concerning local government shall be liberally construed in their favor. Powers, duties, and responsibilities granted local government subdivisions by this constitution and by law shall include those fairly implied and not prohibited by this constitution.

Forms of local government have been treated in the other papers, but attention should be called to the fact that no member of council, including supervisor, shall hold any other office of honor or profit in government, except military commissions and commissions as a notary public.

For what purposes may a county levy taxes or issue general obligation bonds? Some of the answers have been provided in the decision of *Knight vs. Salisbury* (1974). The issue in the case was an action of the General Assembly after the approval of Article VIII creating a special purpose district to provide recreation in a portion of Dorchester County. Part of the opinion stated:

Section 7 [of Article VIII] specifically directs the General Assembly to provide by general law a means by which the counties themselves may tax different areas at different rates of taxation on the basis of the nature and level of governmental services provided. Accordingly, if, when established, the county government of Dorchester County feels a need to provide recreational facilities in a specific area of that county, it may do so and thereupon levy a tax to pay the cost thereof.

The answer is less clear, however, in regard to the police power of counties. The Attorney General in an opinion dated September 16, 1975, to Mr. Joseph Earle, Greenville County Attorney, advised that the Home Rule Act did not provide an express grant of police power.

One very important provision of this act is the section which provides that any county officer or employee who has a substantial interest in any business which contracts with the county for the sale or lease of land, materials, supplies, equipment or services, or who personally

engages in such matters shall make known that interest and refrain from voting upon or otherwise participating in his capacity as an officer or employee in matters relating thereto. Any officer or employee who willfully violates these requirements is guilty of malfeasance in office and upon conviction forfeits his office. Also, any person or corporation who does that in violation of the law renders the contract void.

## MUNICIPAL GOVERNMENT

Municipalities from the beginning have been able to expend tax money and issue bonds for more purposes than counties. Article VIII, Section 1 of the 1895 Constitution provided:

The General Assembly shall provide by general laws for the organization and classification of municipal corporations. The powers of each class shall be defined so that no such corporation shall have any powers or be subject to any restrictions other than all corporations of the same class.

Section 6 further provided:

The Corporate authorities of cities and towns in this state shall be vested with power to assess and collect taxes for corporate purposes, said taxes to be uniform in respect to persons and property within the jurisdiction of the body composing the same; and all the property, except as is exempt by law, within the limits of cities and towns shall be taxed for the payment of debts contracted under authority of law.

Legislation adopted over the years by the General Assembly has classified municipalities according to population. Municipalities have also had the authority to own and operate electric systems, water systems, sewage systems, and to provide recreational facilities for its people, in addition to exclusive jurisdiction of its streets, its general powers and functions. Thus, many of the powers provided in the Home Rule Act are not new to municipalities.

Forms and powers of municipal governments under Revised Article VIII are treated in other papers. However, numerous provision of old Title 47 which provided for Charters, Annexation, Elections, General Powers, and Classification (less than 1,000, 1000 to 5,000, and over 5,000), have been stricken and replaced. The new sections of Title 47 make the law of municipalities uniform.

Those municipalities already certified stand certified in perpetuity, except that if the inhabitants of a municipality fall below fifty, the certificate will automatically be cancelled. The law further provides as to how an area may be incorporated and sets out certain limitations. There is no change in the annexation procedures. All powers of the municipality are vested in a council and the council shall provide for the exercise thereof and the performance of all duties and obligations.

There are several areas of special jurisdiction of municipalities. In order to maintain proper policing and to provide for public sanitation, police jurisdiction and authority of any municipality bordering on the high tide line of the Atlantic Ocean is extended to include all the area between the high tide line and the low tide line. Coastal municipalities also have criminal jurisdiction over piers and other structures and the waters of the ocean within one mile of those portions of the strand within the municipal limits. The governing body of every municipality may upon request of the governing body of any other political subdivision of the state, send any law enforcement officers to such requesting subdivisions in case of emergency, provided that a record of such requests be entered in the minutes of both governing bodies. Functions and services of a municipality may be performed outside corporate limits of the municipality by contract with individuals, corporations, state or political subdivisions, subject to general law and the constitution.

There is a section in the act which is general law providing for waiver of immunity from tort concerning any injuries or damages that might have arisen as a result of any defect in any street, causeway, bridge, public way, etc. There is no change in respect to the liability of a municipality concerning negligent operation of motor vehicles under its control as this provision is contained elsewhere and is governed by uniform tort act of the state.

The council shall be the judge of election and the qualifications of its own members and of the grounds for forfeiture of their office. For this purpose council may hold hearings, subpoena witnesses and require production of documents. Provisions for disclosure, initiative and referendum as the same as those set out for counties. A governing body of a municipality may provide that candidates for municipal offices be elected in non-partisan general elections.

## CONCLUSION

From a legal standpoint it is quite clear that the council (county and municipal) holds the power concerning a county or municipality,

but *subject to the will of the people*. It is the intent as expressed in the new constitutional provisions of Article VIII and as expressed in the Home Rule Act that all power be in the people. The people must, of course, act through council and by vote. While the matter of an appropriation cannot be contested as such (unless it is an illegal appropriation), a general bond issue providing for a pledge of full faith and credit of a county or municipality upon demand for a referendum will have to be submitted to the people for approval. It is also clear that it is the intent of the Assembly that a council may appropriate and expend money for public purposes without being limited as they have heretofore, but this is especially true for counties.