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Legal Aspects of Home Rule in South Carolina

by

JAMES MOSS*

Basically, as most of you know, the big hold up on the so called home rule bill has been the fight between the power companies in regards to annexation. It was a rather strange situation. The poor municipalities were courting the two power companies, the co-ops, and the private boys, like they had two girlfriends and they didn't know which bed to get into. And they ended up getting into both beds, I think, and came up with nothing.

When you pass a piece of legislation this comprehensive and with the powers that this legislation gives counties and municipalities, there will be a tremendous amount of legal problems in the future.

Now, I categorize the basic legal problems in priorities. The number one legal problem at this time is the voting rights act. The 1964 voting rights act, as amended in 1975 requires that prior to implementation of any piece of legislation which affects the rights of voters or voting, setting up of districts, anything in regards to the election process, the justice departments must approve that piece of legislation before it can be implemented. Now this requires that the piece of legislation be forwarded to the justice department. They have 60 days to either approve or disapprove the piece of legislation after which time it can become law. That 60 day period, however, does not begin running until they have the last piece of information that they have requested. So they can continue to request from the attorney general or the counties or anybody they want additional information upon which to make their decision, and therefore the time continues to run. As I understand it, the Home Rule bill is before the justice department at this time.

Let's assume that the justice department does approve the Home Rule bill. In effect, they would have to lay down or approve, in my opinion, the implementation of each of the various county and municipal governments. For instance, let's assume a county does not have a referendum in regards to the number or the method of election in that county. Under the bill, they automatically are required to go to single member districts. The legislative delegation is required to draw

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up those single member districts and pass that in the General Assembly. Now, when that act is passed, that act must too go to the Justice Department for approval. So, that is the first problem that I see with the home rule bill and one that is probably going to be a long and tedious problem. I feel that what they will probably do is basically approve with the right to come in when the bill is implemented in the various counties.

Now, the second problem I see with this bill is the issue of the *Baker vs. Carr* decision. *Baker vs. Carr* was a decision decided in 1962 by the U. S. Supreme Court which required one man, one vote. They said that each man's vote had to weigh equally in regards to the number of people in the district that he was running in. Beaufort County, for instance, right now is malapportioned. Somebody could take the suit to federal court today and the judge would laugh and set it aside. Because we've got representatives on our county government that represent 3,000 people, some represent 52,000 people, some represent 15,000 people. And the law basically says that each representative must represent the same amount of population. Not the same amount of voters, the same amount of population. Now the voters may vary in that particular district from 1,000 to 5,000, but the court is not concerned with that. They're concerned only with population.

Now the third legal issue that's going to continue to confront the Supreme Court, is how much control does the General Assembly still have as a result of Article VIII. Well, I frankly think they have none, and of course the case of *Knight vs. Salisbury* was the first case which basically said that the home rule was affirmed. It was the intention of the General Assembly to turn over the powers to the local government.

The last problem to be confronted, is the actual interpretation of the act, conflicting provisions in the act, and other problems under the S. C. law. Now, let me go over the methods of a county setting up its governmental system. The act provides that you may in the county call a referendum to determine the form of government that you will have. You may, you do not have to, choose to wait and let the act become self-implementing, in which case you go under the government as provided in the act. Now, if you choose to do nothing, there is a mandate in the act, you will then have to have your county divided up into single member districts and the General Assembly is to pass that. After that is passed, the Justice Department will have to look at it to see if the lines are drawn so they do not exclude minorities, political minorities as well as racial minorities.

Now, assume you do have a referendum, all five forms have to be

presented to the voters. Now the referendum may be called by act of the General Assembly, it may be called by resolution from your county council or it may be called by 10% of the registered electors. Two public hearings are required prior to having the referendum, and there is a majority vote requirement on the form of government. In other words, should a form of government not receive a majority vote on the first vote, you would then have to take the two highest numbers and have a run-off vote. I'm sure the Justice Department is looking at this hard, because the majority vote requirement has been used for years in the south to, in effect, dilute minorities. And they know that, and when they read it, they're going to have questions about it. So that's another issue that the Justice Department is going to have to approve in regards to the form of government, because the form of government is set up where the minorities will probably not have much voice in choosing the form.

Now, after the form of government is adopted by the referendum, then this must be adopted by a resolution filed with the secretary of state, before it becomes effective.

In addition to the referendum on the forms of government, a referendum may be called concerning the issue of whether you're going to have your county divided into single member districts of multi-member districts. Now, the Justice Department is really going to look at this hard, because this is a departure from the present form of government. And the catalyst which sets off the voting rights act is changed. Once you change anything in regards to your election process, the Justice Department acquires jurisdiction. You're supposed to forward them that information and they've got 60 days to approve it. If you put this issue to the people, and the people decide that they want their representatives to run at large in the county, I don't think you're going to get past the Justice Department. The Justice Department is not going to approve it. I think they're going to require you to go to single member districts as they did the General Assembly. We've just finished fighting this battle for four years in the House of Representatives. We are all now in single member districts.

Now if you do not have a referendum, of course, you have to divide your county into single member districts. The Justice Department will review that to see that you have no more than a 10% variance in the districts, that is, a 10% variance in the population of the various districts which you design.

You cannot hold another referendum on your county issue of government until two years after the initial referendum is held. There-

after, if you hold one you then have to wait four years before you can hold another referendum concerning the form of government in your county. As you know, the basic forms of government are council, council supervisor, council administrator, council manager, and board of commissioners. The last form of government, of course, puts the delegation back into control of the county. I'm sure that this issue is going to be raised again in the Supreme Court as Mr. McLeod has just been over a recent case in Horry county. If the court sticks to *Knight vs. Salisbury* they may just throw the whole fifth form out. That is the hope we had in the House. That was the big difference between the house bill and the senate bill. Due to the pressure from Horry and Calhoun and some of the other smaller counties who have controlled their counties for years, the fifth form was put in by the senate.

The forming of municipalities is done by ordinance. After the city council has, in effect, made a decision on the form of government which they desire, then 15% of the qualified electors can, by certified petition, seek to have a referendum held on the form of government which the municipality will have.

This bill has given to the municipalities and counties powers which they have heretofore never had. I was somewhat concerned about giving the counties and municipalities so many broad powers, but that's local government. And they've got local government now, so I think the people on the local level are going to have to become much more aware of what is going on.

That's the major legal issues, as I see them. The powers in regards to county governments are rather broad.