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Home Rule: A New Style for South Carolina: Constitutional Aspects

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Home Rule: A New Style for South Carolina

Constitutional Aspects

by

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Before getting into some specific matters it might be well to consider some basic propositions. First, State constitutions are not grants of power to the state legislative body, but are restrictions upon what would otherwise be plenary power. Also, a constitution is to be construed as a whole, not item by item, and the whole is to be harmonized. There is a proper reluctance by the courts to decide a question on the basis of constitutional language or interpretation and a decision will not rest on a constitutional aspect if some other basis permits a resolution of the matter. There is a presumption of the constitutionality of statutes. A South Carolina case of 1812 reflected the views of the Chancellor and are appropriate at this point:

> It is the peculiar and characteristic excellence of the free governments of America, that the legislative power is not supreme; but that it is limited and controlled by written constitutions, to which the Judges, who are sworn to defend them, are authorized to give a transcendent operation over all laws that may be made in derogation of them. This judicial check affords a security here for civil liberty, which belongs to no other governments in the world; and if the Judges will everywhere faithfully exercise it, the liberties of the American nation may be rendered perpetual. But while I assert this power in the Court, and insist on the great value of it to the community, I am not insensitive of the high deference which is due to the legislative authority. It is supreme in all cases in which it is not restrained by the constitution; and as it is the duty of the legislators as well as of the Judges to consult this and conform their acts to it, so it ought to be presumed that all their acts are conformable to it, unless the contrary is manifest. (Chancellor Waties in *Byrne's Adm'rs vs. Stewart's Adm'rs.* (1812) (SC) 8 Desans, 466)

1. MAY A LAW FOR A SPECIFIC COUNTY BE ENACTED BY THE STATE LEGISLATURE?

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Article VIII is the Revised Article on local government in the state constitution and Section 7 of that article reads (in part): "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 form of government."

In the case of *Knight vs. Salisbury* (262 SC 565, 206 SE 2d 875 (1974)) at question was the constitutionality of an act of the General Assembly authorizing the issuance of general obligation bonds for a Recreation District. Also in question was the constitutionality of an act of the General Assembly creating the Recreation District. Both pieces of legislation were enacted subsequent to the date of ratification of revised Article VIII. The recreation district lay entirely within but was only a part of Dorchester County.

Plaintiff contended that the provision of Section 7, which declares that there shall not be enacted "laws for a specific county" did away with powers previously exercised by the General Assembly allowing it to create special purpose districts.

The defendants countered with two arguments: first, that if Section 7 be construed to take away the plenary power, it was inoperative until the General Assembly provided by General Law for the structure, organization, powers, etc., of counties. The second argument was that the power of the General Assembly to carve out a district from the territory of the state for the accomplishment of some public purpose and levy taxes thereupon was inherent and not curtailed by the provisions of new Article VIII.

Section 6 of Article X includes the following statement:

> The General Assembly shall not have power to authorize any county or township to levy a tax or issue bonds for any purpose except for educational purposes, to build and repair roads, buildings and bridges, to maintain and support prisoners, pay jurors, county officers, and for litigation, quarantine and court expenses and for ordinary county purposes, to support paupers and pay past indebtedness . . .

Section 34 of Article III prohibits the General Assembly from enacting local or special laws relating to certain topics and further provides that "In all other cases, where a general law can be made applicable, no special law shall be enacted."

In the *Knight* case, a majority of the Court held both of these local

statutes unconstitutional. In answering defendants' first argument, one of the majority justices held that the provision prohibiting laws for a specific county was operative even absent legislative enactment providing by general law for the structure, organization, power, etc. of counties. This justice also held that it was clearly the intention of Section 7 to put an end to legislatively created special purpose districts within a given county.

The other two majority justices reached the same conclusion on the basis that revised Article VIII provided a vehicle for general law on the matter of public service within a limited area of a county and concluded that the two acts in question violated Article III.

In *Neel vs. Shealy* (261 SC 266 199 SE 2d 542) the court had prior to the *Knight* case ruled that revised Article VIII operated prospectively. Plaintiff in this case sought a declaratory judgment that revised Article VIII precluded the Newberry County Council from issuing bonds for hospital purposes. Plaintiff further asked that the legislation creating the County Council be declared unconstitutional. Both the legislation relative to the Bond act and that creating County Council were passed prior to ratification of revised Article VIII.

Plaintiff also contended that counties and other political subdivisions had reserved to them only those powers possessed by such political subdivisions "at the effective date of the constitution," the effective date being December 31, 1895. But the court held that revised Article VII speaks from March 7, 1973 – the date of its ratification. Therefore, the court reasoned that local or special legislation enacted prior to the date of ratification of revised Article VIII was constitutional.

In a York County case decided at the Circuit Court level and not appealed, the court ruled unconstitutional an act creating a County Council for York County. This legislation passed after the date of ratification of revised Article VIII and created an entirely new form of county government. The court stated that "(T)he Act contravenes two constitutional mandates: one being that no special legislation regarding county government be passed, and the other being that the General Assembly shall by general law provide for county government structure."

In a Lexington County case (*Moye vs. Caughman*) filed July 16, 1975, our state Supreme Court held constitutional a 1974 act as modified during the 1975 Session of the General Assembly. The legislation, among other things, changed the method of electing boards of trustees of the school boards for Lexington County. Plaintiff contended that

the Act was in violation of Article VIII, Section 7. The court, however, held that "(t)he trial judge correctly reasoned that the *Knight* case was not applicable to school districts." The command of new Article XI, Section 3, is that "The General Assembly shall provide for the maintenance and support of a system of free public schools." The court took "judicial notice of the fact that many school districts throughout the state are part of two or three counties, and, accordingly it would be impossible for any one county to pass rules, regulations, or ordinances governing the school district."

At this point it would appear that the conclusion to be reached is that except for matters relating to some educational matters, the General Assembly is not in a position to enact a law for a specific county.

2. DO THE PROVISIONS IN THE HOME RULE ACT REQUIRING THE GENERAL ASSEMBLY TO PERFORM CERTAIN IMPLEMENTATION FUNCTIONS VIOLATE SECTION 7 OF NEW ARTICLE VIII?

Section 14-3701 of the Home Rule Act provides that each county may conduct a referendum on the selection of form of government. The referendum may be called in one of three ways, including an act of the General Assembly. Also, a referendum may be called to determine whether members of the governing body of the county shall be elected from defined single member districts or at large from the county. This referendum may also be called in one of three ways, including an act of the General Assembly. It then says "The General Assembly shall provide for the number of councilmen or commissioners. In the event that the members of the governing body are required to be elected from defined single member election districts, the General Assembly shall provide for the composition thereof."

Section 14-3706 of the Act states that "Members of the governing body of the county shall be elected in the general election for terms of two years or four years as the General Assembly may determine for each county."

Section 14-3714 places a limitation on certain local appointive powers of a council until 1980, implying a continuation of appointments in some instances by legislative delegations.

The question can be properly raised as to the constitutionality of such provisions; particularly in view of the language of Section 7 of revised Article VIII and other language in that article.

3. WHAT IS THE STATUS FROM A CONSTITUTIONAL VIEWPOINT OF THE FIFTH FORM OF COUNTY GOVERNMENT?

Under the Board of Commissioners form, when that form is selected in a referendum, as under any voter selected council form, General Assembly involvement is necessary. The Board is charged with "The hearing of all budget requests and the submission of a proposed annual budget for the operation of the affairs of the county which shall be submitted to the General Assembly not later than March fifteenth for appropriate action."

Assuming that the only "appropriate action" reasonably contemplated is enactment by the General Assembly of a Supply Bill for a particular county, Section 7 language must be considered. The court could make a distinction and hold that acts, although for only one county, are valid when they are a step toward implementation, but as invalid when the act was a county supply bill under the Board of Commissioners form.

4. WHAT IS THE STATUS OF COUNTY POWERS UNDER THE FOUR COUNCIL FORMS?

The limitation on the powers of a county set forth in Section 6 of Article X have not been expressly repealed. These provisions have heretofore restricted counties to those matters considered "ordinary county purposes" as of 1895. A revision of Article X would directly remove the limitation on the powers and a revised article will likely be submitted to the voters in the General Election of 1976.

In the *Knight* case, language was used indicating that the ordinary county purpose doctrine of Article X gave way and was repealed by implication on passage of revised Article VIII, but the two dissenting justices took the opposite view and held that Section 6 of Article X was not repealed by implication.

5. MAY ANY COUNTY WITH A COUNTY COUNCIL FORM OF GOVERNMENT THEREAFTER ENGAGE IN SLUM CLEARANCE AND DISPOSE OF PROPERTY ACQUIRED FOR PUBLIC OR PRIVATE USES?

The Home Rule Act states the powers of each county government under Section 14-3703. Each county government, except that under the Board of Commissioners form, within the authority granted by the Constitution and general law of the state shall have among other powers, the power

> to undertake and carry out slum clearance and redevelopment work in areas which are predominantly slum or blighted, the preparation

of such areas for reuse and the sale or other disposition of such areas to private enterprise for private uses or to public bodies for public uses and to that end the General Assembly delegates to any county the right to exercise the power of eminent domain as to any property essential to the plan of slum clearance and redevelopment.

The key to the issue is the phrase in the general language of Section 14-3703 preceding the listing of powers. The phrase is "within the authority granted by the constitution." Yet the broad language authorizing county governments to carry out slum clearance, including the power of eminent domain, and to make disposition of such property, is highly restricted and not available in many areas of the state.

6. DO THE PROVISIONS IN THE MUNICIPAL SECTION RELATING TO MUNICIPAL COURTS VIOLATE THE REQUIREMENTS FOR ALL COURTS TO BE A PART OF A UNIFIED JUDICIAL SYSTEM?

Section 47-52 provides that the city council may elect or appoint a judge or judges of the municipal court. Section 47-38 relates to the duty and authority of a mayor or municipal judge or judges.

Section 1 of Article V of the constitution provides that "The Judicial power shall be vested in a unified judicial system, which shall include a Supreme Court, a circuit court, and such other courts of uniform jurisdiction as may be provided for by the general law." Section 22 provides that "notwithstanding the provisions of this article, any existing court may be continued as authorized by law until this article is implemented pursuant to such schedule as may hereafter be adopted."

In an opinion (*State ex rel Daniel R. McLeod, Attorney General* v. *The Civil and Criminal Court of Horry County*) filed July 9, 1975, the Supreme Court held that the Associate Judge's position had been unconstitutionally created in violation of Sections 1 and 22 of Article V.

The court, which has exercised initiative in bringing into focus the constitutional mandate for a unified judicial system, would further traumatically emphasize the need for the constitutional mandate to be legislatively fulfilled should it ever have to determine that the municipal courts were unconstitutional and lacked jurisdiction.

Sound arguments could be advanced against such a conclusion being reached and if the question were ever presented, such arguments would likely prevail. The question hopefully will soon be made moot by legislative action on court reform.