Lecture on Home Rule Act of 1975: Legal Aspects

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Constitutional and legal aspects of Home Rule are necessarily inter-related. I am told that Act No. 283 of the 1975 Acts and Joint Resolutions of the South Carolina General Assembly was a very good piece of legislation as it was introduced into the House and the Senate. However, it appears that some funny things happened on its way to the Governor. Last minute changes created some provisions that are hard to interpret, some possible inconsistencies, and some sections which may be unconstitutional.

Prior to the ratification of new Article VIII of our Constitution our laws provided for no uniform system of county government. It is true that the general laws did provide, in what is now Section 14-201 of the Code, that there should be in each county a board of commissioners consisting of an elected supervisor as Chairman, and two commissioners appointed by the Governor upon the recommendation of the legislative delegation. There were, of course, in each county the constitutional offices of sheriff, coroner, clerk of court, probate judge and magistrates, and such other officers as were created by general or special law. But the supervisor-commissioner system did not have a constitutional base and an examination of the code indicates that most of the counties varied the pattern to fit their own requirements. The Courts held that the Supervisor and the Board of Commissioners did not have the power to levy taxes; neither did they in practice make appropriations for county purposes. Appropriations were made by the County “Supply Bill” which was run through the General Assembly each year by the legislative delegation of the county and this Act directed the County Auditor to levy a sufficient millage on all taxable property to meet projected expenditures. The County Board — it was not always called “Board of Commissioners” — generally had jurisdiction over such administrative matters as purchasing, acquisition and disposition of real estate, approval of claims, record keeping, maintenance of county property, receipt and disbursement of funds, and

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maintenance of roads, ferries, and bridges, though not all boards had all this authority. The real power and authority in county affairs lay in the legislative delegation, which held the purse strings, and in the days before reapportionment when there was one Senator in each county, the county Senator was the "top dog", as he could veto any local legislation, including any part of the supply bill.

The move toward county government began in Charleston in 1948. Subsequently, other counties followed suit, and by the time the Home Rule Act was enacted, a large number of the counties in the state had some form of Home Rule pursuant to a special act of the General Assembly. There were still strict constitutional limitations on the purpose for which counties could spend tax revenues and they still had no police power except in those instances where a particular exercise of that power was given to them by general law.

As a direct result of our Supreme Court decision in Knight vs. Salisbury, the General Assembly in 1974 enacted Act No. 926, which empowered county governing bodies to enlarge, diminish, or consolidate special purpose districts, and Act No. 1189, which enable them to authorize bond issues for such districts.

It was in this atmosphere that Act No. 283 — the Home Rule Act — was enacted in the waning days of the 1975 session. As you know, this act provides for five alternate forms of county government which may briefly be described as follows:

— Form No. 1: The Council form, in which the responsibility for policy making and the administration of county council consisting of not less than three nor more than twelve members who are qualified electors of their county.

— Form No. 2: The Council-Supervisor form, with a council of not less than two nor more than twelve members, and elected supervisor as the chairman of the council.

— Form No. 3: The Council-Administrator form, with a council consisting of three to twelve members, and an administrator employed by the council, who is responsible for the administration of all departments which the council has the authority to control.

— Form No. 4: The Council-Manager form, consisting of five to twelve members, which is identically the same as the Council-Administrator form except that in this form the auditor and treasurer of the county may be elected or appointed by the council as the council may determine by ordinance.
Form No. 5: The Board of Commissioners form, consisting of a board of not less than four nor more than twelve members, with the present elected supervisor, if there is one, acting as chairman. This form has none of the legislative powers which are granted to the other forms, and its authority is generally limited to administrative matters such as hearing of budget requests, the formulation and implementation of some personnel policies, purchasing of supplies and equipment, approval of expenditures from the contingent fund, supervision of buildings and grounds, and the exercise of the power of eminent domain. The annual budget must be submitted to the General Assembly for approval. It seems that one could properly ask who or what can legislate for a county with this form, as it has no legislative power of its own and the General Assembly can no longer legislate for a particular county.

Article VIII provides that the General Assembly shall provide not more than five forms of municipal government and the Home Rule Act provides for three: the Mayor-Council form, the Council form, and the Council-Manager form. All municipalities are required to adopt one of these three forms, and this shall be done by ordinance of the municipal council after at least one public hearing. Under the Mayor-Council form, there is a municipal council consisting of a mayor and 4, 6, 8, or 12 council members; and the mayor is the chief administrative officer. The Council form has a council consisting of 5, 7, or 9 members, including the mayor, and the council is given specific authority to appoint an administrative officer to assist the council. Under the Council-Manager form, there is a municipal council which is composed of a mayor and 4, 6, or 8 councilmen, and it is directed to employ a manager as the chief executive officer of the municipality. The Council-Manager form is given certain broad powers in addition to those given all municipalities and is the strongest of the forms.

How does a county transform itself from the old form to the new? To begin with, there are two routes which counties may follow. The first is a referendum, which may be called by an act of the General Assembly, or by resolution of the county governing body, or by petition of at least 10% of the county’s electorate. Before the referendum can be held, there must be at least two public hearings, advertised in a newspaper of general circulation, at which the legislative delegation explains the five alternate forms of county government. In a referendum of the forms, all five forms must appear on the ballot, and if no form receives a majority, a run-off referendum must be held, two weeks later, at which the two forms receiving the highest number of votes...
must be voted on again. The governing body of the county then adopts the form of government selected in the referendum, and this is effective when it is filed with the Secretary of State.

A referendum may also be held on the method of electing council-members — that is, whether they are to be elected from single member districts or at-large from the county. The Act provides that the numbers and terms of councilmen or commissioners will be provided by the General Assembly, and if single member districts are chosen, the General Assembly will provide for the composition of these districts. It is the opinion of the Attorney General that the referendum cannot offer a system which calls for at-large elections but from defined single member residence districts so that each such district is assured of a council member. Neither can it offer a system whereby some members are elected at-large and others from single member districts.

In any case, the referendum must be held before July 1, 1976, if the county is to change its form or method of election. The Act assigns to each county a form which will automatically become effective if no referendum is held.

After the form of government has been selected, a county can hold a referendum to choose one of the other forms after the lapse of two years; this may be called by the governing body or a petition of 10% of the registered electors. There shall be no change to another form unless that form receives a favorable vote from a majority of the voters in the referendum. In any case, there can be no further referendum on the subject for a period of four years thereafter.

If a new form of government is adopted, all members of the governing body who are serving terms of office upon the effective date of the new form will continue to serve the terms for which they have been elected and until their successors are elected and qualify. The Act specifically provides that once a form of government, other than the Board of Commissioners form, has been selected and has become effective, the county council then shall take the following steps:

First, provide by ordinance for the election and composition of the new county council;

Second, provide by ordinance for the election of county treasurer and auditor as their terms expire — or, under the Council-Manager form, provide for their appointment or election as it shall determine; and

Third, take any other necessary steps including the adoption of a schedule for the election of new council members and supervisor, based
upon the expiration of the terms of persons serving unexpired terms when the new form becomes effective. The Act specifically provides that the new council need not conform to numerical requirements until the unexpired terms of old members are completed.

New members are elected for two or four-year terms, as prescribed by the General Assembly, and if they are elected for four-year terms, the terms are staggered. If necessary, in the first election, one-half plus one of the members who receive the highest number of votes shall receive four-year terms and the remaining members serve two-year terms.

In the transition process, what happens to existing special laws affecting the county? The Home Rule Act provides that those local laws which are in effect when the new government takes over will remain in effect until they are repealed by the General Assembly or until January 1, 1980, whichever is sooner; but except for the Fifth Form, these restrictions do not apply to appropriation matters after the initial election of council members.

When it is organized, council proceedings must be recorded and all ordinances codified, published, and made available for public inspection. Public hearings must be held before the Council can take action on such matters as annual or capital budgets, appropriations, adoption of codes, zoning, sub-division regulations, levying taxes, and the sale or lease of county-owned real estate. Not less than fifteen days notice of such hearings shall be given in a newspaper of general circulation in the county.

The Home Rule Act now permits counties to perform a wide range of service functions and to tax different areas at different rates depending upon the nature and level of services provided. These powers obviously cast counties in a completely new role, and counties must prepare themselves to deliver almost all services that are demanded by their citizens. Special tax districts, however, may be created under certain conditions.

What about the police power, which is generally defined as the right to enact legislation which regulates and promotes the health, morals, safety, and welfare of the people? The Home Rule Act does provide that the county council, by a two-thirds vote and without a public hearing, may adopt ordinances to meet public emergencies affecting life, health, safety, or property of the people, but such an ordinance expires after sixty days. However, it is the opinion of the Attorney General that the Home Rule Act in itself does not contain an express grant to counties of a general police power.
As to personnel matters, any discharged employee may be granted a public hearing before the entire county council if he makes a timely request; or in those counties which have a grievance committee, he may submit his case to that committee.

The Act also provides for initiative and referendum, which directly involve the people in the legislative process. Under the initiative and referendum procedure, 15% of the qualified electors may propose an ordinance, except one appropriating money or levying taxes, and may adopt or reject such ordinance at the polls. Fifteen percent of the electors in a municipality, county, or in a public service district may also petition the city or county council for the repeal of an ordinance authorizing a bond issue or other indebtedness which pledges the full faith and credit of the municipality, county or district. If the council fails to pass or repeal the ordinance as requested by the petition, the issue is then to be submitted to the electors not less than thirty days or more than one year after council takes its vote. This procedure is entirely new to South Carolina.

As to the effect of the Act upon city-county relationships, counties can perform any services function within the boundaries of a municipality by contract with any individual, corporation, or the municipal governing body, but the county may not, without the permission of the municipal governing body, perform that service if the municipality already provides the service or has budgeted for it, nor may the county create a tax district which encroaches on the municipal boundaries. The autonomy of municipalities would seem to be well respected, but both the Home Rule Act and Article VIII itself give ample opportunity for cooperation between cities and counties, by agreement, in the performance of service functions.