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The Home Rule Act — Fiscal Aspects

by

RAYMOND M. URQUHART*

One reads this fifty-page document to glean out provisions applicable to counties and cities insofar as fiscal responsibilities are concerned, and one discovers that there are eighteen references to the General Assembly, i.e., there are essentially eighteen different places in the Act which start off like this: “Whenever the General Assembly shall provide by general law . . .” The point of this is (and it applies primarily to counties) that the General Assembly has not yet loosened those apron strings that it has held very tightly for the past eighty years.

Justice James B. Morrison, Resident Judge 15th Judicial Circuit, in the Horry County case decided in May, 1975 said, in part, the “framers (of Article VIII of the 1895 Constitution) intended that (County) governing bodies have powers of municipal governing bodies and that a general law should be enacted for that purpose.” This decision clearly indicated that the Horry County Board of Commissioners is empowered to exercise functions vested in the County Board, including disbursement of funds. The key issue here centered around the practice in Horry County of disbursing county funds authorized by the Senator and a majority of the members of the County’s legislative delegation. This practice was declared to be in violation of Section 8, Article I of the S. C. Constitution. On appeal to the S. C. Supreme Court, that Court essentially for technical reasons dismissed the appeal.

The point of this mention of the Horry County matter is to remind us that the Special Study Committee established in 1966 to recommend changes in the state constitution intended that County Councils have “powers similar to those exercised by municipal councils.” My contention is that this is not exactly what happened.

This paper will focus on “fiscal aspects” of the Home Rule Act. We will first look at general powers given to counties and cities and then examine specific authority available under each of the several forms of local government. It should be noted that the legislation provides five county and three municipal options. Each, as you might expect, has differing structure, organization, powers, duties, functions and responsibilities.

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Counties

The alternate forms of county and municipal government are as follows:

**County**
- Council
- Council-Supervisor
- Council-Administrator
- Council-Manager

**Municipal**
- Council
- Mayor-Council
- Council-Manager

Board of Commissioners

So, now let's look first at these broad powers which may be exercised by county governing bodies under each of the alternate forms of government - except the board of commissioners form. The uniqueness of this so called fifth form necessitates separate treatment. Again, in this discussion we are looking only at the fiscal aspects.

Section 14-3703 of the Act identifies the following powers:

1) Assess property and levy ad valorem taxes;

2) Levy uniform service charges, including the power to tax different areas at different rates concerning both the type and level of services provided;

3) Make appropriations for various county operations, including but not limited to funding for:
   - public works — roads, drainage
   - water treatment and distribution
   - sewage collection and treatment
   - courts and criminal justice administration
   - correctional institutions
   - public health
   - **social services**
   - transportation
   - planning
   - economic development
   - recreation
   - public safety — police, fire protection
   - disaster preparedness
   - code enforcement
There is, though, a "provided, however," in this section of the Act. And it goes essentially as follows: If a special tax district is to be established for any of the purposes mentioned above, one of three procedures is required:

1) Property owners (a majority in the affected area) may petition County Council for an election to consider the creation of the special tax district, the services rendered and level of taxes. A majority of the voters must approve these measures.

2) If 15% of the property owners in a proposed special tax district petition for such a district both a referendum and election must be held with separate boxes. A majority of voters and property owners must approve the district proposed.

3) Property owners numbering at least 75% and owning at least 75% of the assessed property in the proposed special tax district may petition County Council. The petition must contain information describing the area, services desired and level of taxes.

It should be noted that each of the three initiating procedures requires that property owners in the proposed tax district take the first step. In two, an election is required. County Council, if the result in any of these procedures is favorable, shall create by ordinance the special tax district.

There is another "provided, further." County Council may not fund any service not rendered on March 7, 1973, (Article VIII of the Constitution was approved on this date) by a county-wide tax if the service is currently being provided by a municipality or if the city has funded the service — except with the approval of the municipal council.

We come to yet another "provided, further." Voters in the proposed special tax district must approve by referendum the creation of the district if general obligation bonds are to be issued and the tax levy to retire the bonds is at rates different from those levied elsewhere in the county. Again, a "provided, further." Voters in the proposed special district must approve by referendum, taxes at rates different from those levied in other sections of the county related to both the nature and level of services to be provided.
Referendums of petitions creating special tax districts are not required to establish the enumerated services county-wide.

Appropriations which could result in
- a reorganization or restructuring of a sheriff's department
- limiting the duties and functions currently performed by a sheriff
- providing duplicate police duties and functions shall not take effect until the voters approve by referendum the appropriations.

Section 14-3702 (8) requires the creation of an "accounting and reporting system" for the receiving, holding, allocating and disbursing of county funds.

Section 14-3702 (10) authorizes County Council to establish policies and procedures concerning the issuance of both revenue and general obligation bonds subject, of course, to the county's bonded debt limit.

And in Section 14-3702 (12) a new power is enacted which enables county governing bodies to levy "uniform license taxes upon persons and businesses engaged in any business, occupation or profession in the unincorporated area of the county." Teachers, ministers and rabbis are exempt as are utilities and their suppliers. The tax is levied against gross income.

Funds may be appropriated for multi-county projects authorized by general law. (Section 14-3703 (13)). This is an interesting feature because it provides authority to begin negotiating with neighboring counties (presumably contiguous) where it might be helpful to do so to provide services that may be more economically provided by two or more counties joining together.

Governing bodies may also undertake slum clearance and redevelopment programs, including the sale of property and air and subsurface rights involved in such redevelopment to private enterprise or public bodies. (Section 14-3703 (15)).

County Councils may not establish any special tax district which encompasses any part of a municipality unless the city council agrees. A watershed district, however, can be created without such concurrence. (Section 14-3703 (17)).

Counties have the power to perform various authorized functions or services within city boundaries by contract subject to general law and the Constitution. If, though, the service is being provided or budgeted, the City Council must approve the contractual arrangement
with an individual, corporation or the city council itself. (Section 14-3703.1).

The imposition of a local service by the General Assembly requires under the Act that such implementing legislation also include sufficient state funds for county purposes. This provision of the Act refers to the need for county personnel, facilities or equipment in connection with a state-mandated program. For example, last year the General Assembly required that counties provide hearings for mental patients. The cost is not staggering but it is an extra cost that counties have had to assume. Such an act now would require the General Assembly to supply the funds for such an imposed program. This section, however, does not apply to construction or capital improvement projects or other permanent facilities required by general law. And it is not retroactive. (Section 14-3703.2).

Section 14-3703.3 provides for the election of the auditor and treasurer under three of the alternate forms of government — council, council-supervisor and council-administrator. These officials may be appointed by County Council under the Council-Manager form. There is no specific statutory provision for election or appointment of these officers in the fifth form — Board of Commissioners. However, Section 14-3785.2 (b) says, in part, the rights of the auditor and the treasurer to select their own personnel shall not be infringed. Insofar as the selection process is concerned, perhaps, this is a legislative oversight.

Under certain circumstances County Councils or the General Assembly may determine school tax millage. In counties with more than one school district, for example, the governing body may by ordinance establish a county-wide millage rate. If County Council had this power at the time one of the alternate forms is effective, it may continue to do so. Generally, the Act gives no new powers to County Councils concerning public school education. County officials should review Section 14-3704 carefully.

Section 14-3705 is particularly important. Existing special purpose districts, water and sewer authorities or “other political subdivision by whatever name designated” (presumably including municipalities) functioning at the time one of the forms is adopted shall continue to “perform their statutory function except as they may be modified by the General Assembly.”

Any legislative act of a county which either dissolves a district or absorbs its functions entirely within the county government must provide that such act will be effective only after approval by referendum
of a majority of the voters of the affected district. If, though, such a district is dissolved, the county takes title to its property and assumes all debts.

Another key section of the Act, Section 14-3710, establishes markedly new County Council legislative procedures. Public hearings, for example, are required for the following:

- adoption of the annual operating and capital budgets
- appropriations, including *supplemental* appropriations
- levying taxes

Notice in a newspaper of general circulation of at least 15 days is required. Thus for the first time both counties and cities are required to adopt capital budgets.

Emergency ordinances may be adopted, but not to levy taxes or impose or change a service rate. Such ordinances will require a two-thirds vote of Council members present. It is effective for 60 days.

In Section 14-3711, the Act sets forth various budgetary and reporting procedures. In the case of counties, the fiscal year begins on July 1 and ends June 30. A new requirement compels all county "offices, departments, boards, commissions or institutions receiving county funds make a full, detailed annual fiscal report to the County Council at the end of the fiscal year."

Operating and capital budgets must, of course, be adopted prior to the beginning of the fiscal year. Sources of anticipated revenue, including taxes, likewise must be identified. The budget ordinance (Section 14-3709 requires that County Council take all legislative action by ordinance) provides for the levy and collection of taxes. Supplemental appropriations are authorized — by ordinance — but require identification of funding. Reports, estimates and statistics may be required from any county agency or department concerning preparation of the annual budget or supplemental appropriations.

Independent annual audits of all financial transactions of any agency funded in whole or in part by county funds are required. The audit firm is designated within 30 days after the beginning of the fiscal year and for one year. (Section 14-3712). City Councils may designate an auditing firm for up to four years.

Another interesting feature that may cause some anguish on the part of County Council about how far it can go, both in terms of authority and funding, is in Section 14-3713 which provides for "cen-
tralized purchasing" for goods and services required by county government. The key word in this Section, of course, is "centralized" purchasing. It seems to say that all purchasing must be handled by a single office for all county agencies and departments.

A question of ethics comes up both in the county and the municipal sections. A financial interest in any business which "contracts with the county for sale or lease of land, materials, supplies, equipment or services or personally engaging in such matters shall make known that interest and refrain from participating . . . as a county officer or employee in such matters." (Section 14-3715).

The following table shows fiscal functions applicable to each of the alternate forms of county government.

### Fiscal Aspects by Alternate Forms

<table>
<thead>
<tr>
<th>Function</th>
<th>Council-Admin</th>
<th>Council-Manager</th>
<th>Council-Board of Commissioners</th>
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</thead>
<tbody>
<tr>
<td>Prepare annual operating</td>
<td>XXX</td>
<td>XXX</td>
<td>XXX</td>
</tr>
<tr>
<td>and capital budgets</td>
<td>XXX</td>
<td>XXX</td>
<td>XXX</td>
</tr>
<tr>
<td>Prepare fiscal reports</td>
<td>XXX</td>
<td>XXX</td>
<td>XXX</td>
</tr>
<tr>
<td>Inspect fiscal records</td>
<td>XXX</td>
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</tbody>
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Note: (1) Annual operating and capital budgets are prepared by the supervisor, administrator or manager for submission to County Council, including a statement describing the major features of the proposed budget, sources of revenue and tax revenue required. (It is important to note also that for the first time a capital improvement budget is required.) (2) In the fifth form, the Board of Commissioners is required to submit the proposed budget (no specific mention of a capital budget) not to the legislative delegation but to the General Assembly by March 15.

### Municipalities

Section 47-32 of the Act confers on cities powers "respecting any subject as shall appear to them necessary and proper for the security, general welfare and convenience of such municipalities for preserving health, peace, order and good government, including authority to levy and collect taxes on real and personal property, . . . make assessments and establish uniform service charges; . . . levy a business license tax on gross income, and borrow in anticipation of taxes . . ." Borrowing "in anticipation of taxes" is a power reserved to cities only. This leaves absolutely nothing out of the provision that provides flexibility for a city to respond to needs of its citizens. Fines not exceeding $200 for violation of city ordinance and regulations are authorized.
A municipality may provide services outside the corporate limits by contract with an individual, corporation, state, political subdivisions or U. S. agency subject to general law and the S. C. Constitution — except in another city or political subdivision service area. (A service area is defined in the section as an area in which a service is provided or funds budgeted by the governing body of the service area.) This prohibition, however, is not applicable if the governing body concerned approves. (Section 47-35). In other words, a city can by contract provide a service to another jurisdiction or agency if it is not now provided by another political subdivision.

The ethics provision applicable to municipal officers and employees is identical to the section about financial interests of county officers and employees. (Section 47-42).

City Council is authorized in Section 47-46 to fix by ordinance salaries of the mayor and council. Expenses may also be determined by ordinance.

Auditing requirements for municipalities are similar to those imposed on county councils. The accountant or audit firm, however, may be designated for up to four years. The county auditor is limited to one year. (Section 47-53).

Emergency ordinances are adopted in the same manner as such legislation is enacted by county government and with the same limitations. (Section 47-54 (d)).

City Councils are required to adopt by ordinance the following:
- budgets
- tax levy
- borrowing of money

Such ordinances are effective after two readings, six days apart.

The following table shows fiscal functions applicable to each of the alternate forms of municipal government.

### Fiscal Aspects by Alternate Forms

<table>
<thead>
<tr>
<th>Function</th>
<th>Mayor-Council</th>
<th>Council</th>
<th>Council-Manager</th>
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<tbody>
<tr>
<td>Prepare annual budget and</td>
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<td>capital program</td>
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<td>Prepare fiscal reports</td>
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<tr>
<td>Inspect fiscal records</td>
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Note: (1) The governing body in the mayor-council and council form is not required to adopt a budget.
(2) The council form is silent even as to the preparation of a budget.
Concluding Remarks

Greenville Attorney John Mann, who is Vice President of the Chamber of Commerce, Governmental Affairs Committee, according to the Greenville News, declared last July, the General Assembly "does not want to yield power to local government." The South Carolina legislature did, though, shift albeit somewhat reluctantly certain powers to counties and expanded the already broad authority of most municipalities by passage in June, 1975, of the Home Rule Act. Nevertheless, if the intent of the framers of Article VIII was to encourage enactment of legislation granting counties powers similar to those exercised by a municipal council, the goal is yet to be reached.

Obviously, county provisions of the Act fall far short of enabling features in the municipal section of the Act. Counties do, however, have broader authority to establish new services, impose license taxes, authorize slum clearance, provide for centralized purchasing, offer by contract various services to other political subdivisions and fund multi-county projects.

This paper, as stated at the outset, did not attempt to describe the structure, functions or responsibilities of either county or city governing bodies except as such functions and duties relate to various fiscal aspects. Obviously, this brief overview can hardly serve as the final word. Much careful analysis of the Act by both county and city officials is essential to understand our emerging responsibilities. It is a bit disconcerting to discover in this analysis of the county and municipal provisions of the Act that county apron strings have been loosened but not yet untied.

The Home Rule Act deserves, as practitioners in this business of governing, our prompt and thoughtful attention.