

The Home Rule Act: A Historical Perspective

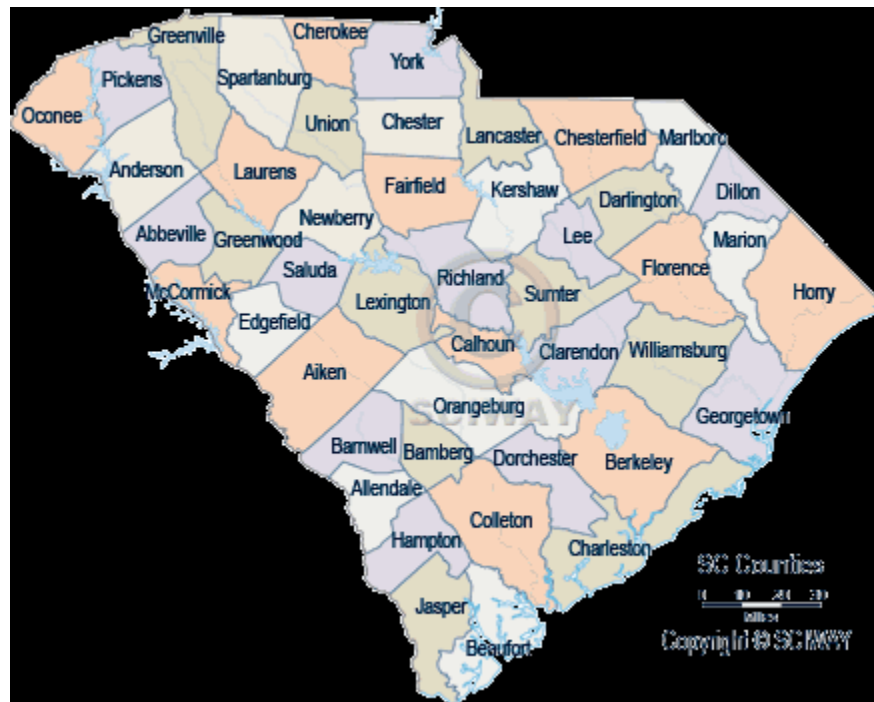
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*South Carolina
Association
of Counties*

Definition of Home Rule

- Home Rule is the exercise of independent authority by elected local governments.



General Assembly vs. Local Governments



The Road to Home Rule in South Carolina

- Step 1. Limited Powers under the S.C. Constitution of 1895
- Step 2. Amendment to the Constitution in 1973
- Step 3. Home Rule Act of 1975
- Step 4. Protecting/Expanding Home Rule



Counties Prior to Home Rule

- Dillon's Rule - Governed by the General Assembly
 - Local Governments have only those powers specifically delegated to them by the state
- Supply Bills (Budgets)
 - Counties typically had their annual budgets passed by their legislative delegations in Columbia



Step 1. Local Limitations Under South Carolina Constitution

- *SC Constitution of 1895*

Article 10 Section 6

- ***“...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 public 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...”***



Limits Reaffirmed by Judiciary

- ***Gentry v. Taylor*** (1939)
192 S.C. 145, 5 S.E. 2d 857
- ***“...We think that the natural and logical construction of this provision of the Constitution leads to the inevitable conclusion that the issuance of bonds by the county for the extension and improvement of an airport, as is here proposed to be done, would not be for an ordinary county purpose, but would be altogether contrary to the usual and accepted definitions of the word ‘ordinary’ .” See authorities above cited.***



Limits Reaffirmed by Judiciary

- ***Doran et al. v. Robertson et al. (1943)***
203 S.C. 434, 27 S.E. 2d 714
- ***“...But no argument need be advanced to maintain the assertion that certainly when the Constitution was written and adopted in 1895, sewerage systems were unknown in rural communities and could not have been in contemplation of the framers when they used the words “ordinary” and “corporate” in describing county purposes...”***



Limits Reaffirmed by Judiciary

- ***Leonard v. Talbert et al.*** (1954)
225 S.C. 559, 83 S.E. 2d 201
- ***“...Likewise as to the other grounds the appeal from the judgment must be sustained because we think the purpose is plainly recreational rather than educational and could not have been within the intent of the framers of the Constitution when they used the term ‘education’...”***



Important Decision

- ***Gaud v. Walker*** (1949)

214 S.C. 451, 53 S.E. 2d 316

- ***The General Assembly passed legislation (Act 764 of 1948) allowing the citizens of Charleston County:***

- 1. To select, by a majority vote, a method of election for county council;**
- 2. Vesting the council with the authority to levy taxes;**
- 3. Setting out the powers and duties of the council;**
- 4. Providing an outline of a form of government;**



Important Decision

- ***Gaud v. Walker*** (1949)

214 S.C. 451, 53 S.E. 2d 316

“...We think it follows that the authority given to the county council to make appropriations, levy taxes, incur indebtedness and issue bonds, exercise the power of eminent domain, supervise and regulate the various departments of the county, establish policies affecting the administrative employees of the county, and to otherwise provide for the internal management of Charleston County must be sustained unless prohibited by some other section of the Constitution.”



Police Powers Clause

- ***Gaud v. Walker*** (1949)

214 S.C. 451, 53 S.E. 2d 316

- ***“The precise question here is whether the police power may be delegated to the corporate authorities of one county and withheld as to all others.”***



Police Powers Clause

- ***Gaud v. Walker*** (1949)

214 S.C. 451, 53 S.E. 2d 316

- ***If valid, the results would be far reaching. If all other counties of the State adopted a similar plan, we would then have a State divided, in effect, into forty-six municipalities, each promulgating diverse regulations or ordinances, some of which, although relating to the same subject matter, might differ materially from those in adjoining counties.***



Police Powers Clause

- ***Gaud v. Walker*** (1949)

214 S.C. 451, 53 S.E. 2d 316

- *We have heretofore endeavored to point out that rational differences exist in the various counties with reference to their fiscal affairs, but no good reason appears why the police power should be exercised by the corporate authorities of one county and not by the others, particularly when comparable in size and population. Our attention has been called to no condition peculiar to Charleston County calling for the exercise of the police power by its corporate authorities. There is nothing in the Act reasonably justifying this classification.*



Important Decision

- ***Gaud v. Walker*** (1949)
214 S.C. 451, 53 S.E. 2d 316
- Lawsuit was dismissed except that police powers clause was ruled unconstitutional
- ***Following reapportionment in the 1970's, many other counties adopted the "Charleston Model."***



Step 2: Amendment to the SC Constitution (1973)

- **Article VIII, Section 17**

- § 17. **Construction of Constitution and laws.**

- **The provisions 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. (1972 (57) 3184; 1973 (58) 67.)**



Step 2: Amendment to the SC Constitution (1973)

- ***Article VIII, Section 17***

- ***§ 17. Construction of Constitution and laws.***

- **Article VIII conferred Home Rule on all South Carolina cities and counties and directed the General Assembly to establish standardized forms of city and county government.**



Judicial Response to Article VIII

- ***Knight v. Salisbury*** (1974)
262 S.C. 565, 206 S.E. 2d 875
- ***Action of General Assembly in creating Lower Dorchester Recreation District Commission and authorizing it to issue general obligation bonds for recreational facilities within its district were void in view of constitutional provision prohibiting General Assembly from enacting laws for specific county.***



Judicial Response to Article VIII

- ***Knight v. Salisbury*** (1974)

262 S.C. 565, 206 S.E. 2d 875

- ***Section 7 of Article VIII declares that “[n]o 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.”***



Judicial Response to Article VIII

- ***Knight v. Salisbury*** (1974)

262 S.C. 565, 206 S.E. 2d 875

- ***There is a sound reason for curtailing the power of the General Assembly to create special purpose districts within a county. If, despite the prohibition of laws for a specific county, the General Assembly may continue to carve a given county into special purpose districts, a frightful conflict would exist between the power of the General Assembly and the power of the county government.***



Judicial Response to Article VIII

- ***Knight v. Salisbury*** (1974)

262 S.C. 565, 206 S.E. 2d 875

- *Such a result could well be chaotic and Home Rule intended by Section 7 of Article VIII would be frustrated in whole or in part since the result could well be that the governing body in each county contemplated by the draftsmen of Section 7 would have little or no power left. To point out the potential results of such a theory compels its rejection.*



Step 3: Act 283 of 1975

“Home Rule”

- ***Alternative Forms of County Government***
 - *May be selected by referendum*
 - *If no referendum; Assigned*
 - *Method of Election may be considered by referendum*
- ***Set up Powers of Counties***
 - *All forms of Government to have same powers*



Step 3: Act 283 of 1975 “Home Rule”

- ***5 Forms of County Government***
 - ***Council***
 - ***Council Supervisor***
 - ***Council Administrator***
 - ***Council Manager***
 - ***Board of Commissioners***
 - ... until ***Duncan v. York (1976)***



Aftermath of “Home Rule” Act

- ***Williams v. Town of Hilton Head*** (1993)
311 S.C. 417, 429 S.E. 2d 802
 - *The South Carolina Supreme Court found that the State Legislature intended to restore autonomy to local government and to abolish the application of Dillon’s Rule which gave local governments only those powers ceded by the State.*



Step 4: Protecting/Expanding Home Rule

- Home Rule constantly under attack by the General Assembly



Step 4: Protecting Home Rule

H. 3290 of 2013 – Flow Control

H. 3529 of 2017/S. 394 of 2019 – Plastic Bag Ban

H. 3653 of 2017 – Industrial Nuisances

H. 3929 of 2017 – Animal Facilities

H. 3274 of 2019 – Tobacco Preemption



Step 4: Expanding Home Rule

H. 3896 of 2018 – Nuisance Property Cleanup

H. 3952/S. 666 of 2019 – Local Regulation of Golf Carts

H. 4438 of 2019 – Additional Sales and Use Tax



Contact Info

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- **Questions?**

