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SOUTH CAROLINA CONSTITUTIONAL LAW

I. Bonded Indebtedness

In *Theodore v. Blakely*[1] a resident taxpayer brought a class action to test the constitutionality of a recently passed constitutional amendment[2] allowing the issuance of bonds for hospital purposes. The question was whether the amendment removed altogether the debt ceiling *for hospital purposes*, which would have the effect of simultaneously raising the ceiling *for other purposes* from eight to twenty-five percent, or whether, instead, the amendment imposed a hospital debt ceiling of twenty-five percent of taxable property, which would leave the eight percent for other purposes unchanged?

A unanimous court looked to the wording of the proposal submitted to the electors.[3] "[T]he language of the question indicates that the purpose of the amendment was to increase only the bonded debt limitation applicable to hospital bonds and to leave the bonded debt limit for other purposes unchanged."[4] The court went on to hold that previously issued bonds would be added to any new issue in arriving at the total debt ceiling, because the language of the proposal was "to *increase* . . . [the] bonded indebtedness."[5]

1. 253 S.C. 98, 169 S.E.2d 276 (1969).
2. S.C. Const. art X, § 5 was amended to read as follows:
> Provided that the limitations as to bonded indebtedness imposed by this section shall not apply to bonded indebtedness of Greenville County for providing hospital facilities and the county may incur bonded debt to the extent of not exceeding twenty-five per cent of the assessed value of all taxable property therein. The bonded indebtedness incurred for the purpose of providing public hospital facilities shall not be considered in determining the power to incur indebtedness by any municipality or political subdivision of the county or State covering or partially extended over any portion of the territory of Greenville County.

3. 253 S.C. at 100, 169 S.E.2d at 277. The proposal submitted to the qualified electors was:
> Shall Section 5 of Article X of the Constitution of the State be amended so as to permit Greenville County to increase its bonded indebtedness up to twenty-five per cent of the assessed value of the taxable property therein for the purpose of providing public hospital facilities and to exclude such indebtedness from the limitation of aggregate indebtedness upon any municipality or political subdivision of the county or State covering or partially extending over any portion of the territory of Greenville County.

4. 253 S.C. at 101, 169 S.E.2d at 278.
5. *Id.* (emphasis added).

II. CONFLICT BETWEEN STATUTE AND CONSTITUTION

In *Clay v. Thornton*[6] the court reiterated the maxim that, where there is a conflict between the language of the constitution[7] and the language of a statute,[8] the constitutional language will prevail. Residents of the area called "North Charleston" sought to incorporate. Of the 16,900 electors residing and entitled to vote within the area, only 7,315 cast ballots in the incorporation election. A majority of these voters (4,572 of 7,315) voted in favor of incorporation. The elected "city fathers" sought to obtain a charter from the Secretary of State. Interested citizenry objected and obtained a temporary restraining order. The South Carolina Supreme Court assumed original jurisdiction because of immediate public interest.

A unanimous court found "the language of Article 8, § 2 plain, and unambiguous. It requires that a majority of the qualified electors in the area to be incorporated must consent to incorporation, but leaves open to the Legislature the right to prescribe how 'such consent' of the designated majority is to be established."[9] This consent could have been by petition, but the Legislature chose the election process.

The respondents cited *Cass County v. Johnston*[10] and *Paris Mountain Water Company v. City of Greenville*[11] as standing for the proposition that those who do not vote in an election are presumed to have assented to the expressed will of the majority. The *Clay* court, however, pointed to dictum found with the holding in the *Paris Mountain* case:

> 'We find no provision in the Constitution which prescribes that a majority of all electors, those voting

6. 253 S.C. 209, 169 S.E.2d 617 (1969).
7. S.C. CONST. art VII, § 2 reads as follows:
   ELECTORS MUST CONSENT TO ORGANIZATION. No city or town shall be organized without the consent of the majority of the electors residing and entitled by law to vote within the district proposed to be incorporated; such consent to be ascertained in the manner and under such regulations as may be prescribed by law.
8. S.C. CODE ANN. § 47-353 (1962) reads as follows:
   RESULT OF ELECTION AND EFFECT THEREOF . . . . The [manager's] return shall show the number of those voting in the election, together with the number of those on each of such questions. If a majority of those voting in such election shall vote in favor of such proposed territory being incorporated, then the Secretary of State shall issue a certificate of incorporation of the proposed city . . . .
9. 253 S.C. 209, 214, 169 S.E.2d 617, 619 (1969).
10. 95 U.S. 360 (1877).
11. 110 S.C. 36, 96 S.E. 545 (1918).

> and those not voting, shall be necessary to carry an election by the people *save in one instance, and that refers to an election to determine if a town shall be incorporated. Article 8, Section 2.*'[12]

Relying on this, the *Clay* court held that, in *all* future incorporation efforts which involve the election process, the assenting majority must be a majority of all voting *and non-voting* qualified electors. In the North Charleston case this number would have been 8,451 favorable votes.

III. CONSTITUTIONAL AMENDMENTS — THEIR STATUS

Earlier in this volume of the *South Carolina Law Review*, a note surveyed articles I-VII of the proposed draft of the South Carolina Constitution.[13] Several joint resolutions by the Legislature will now put some of the surveyed articles before the voters. The comments found in the previous *Note*[14] still apply to the proposed amendments except as noted below.

The right to indictment will remain the same under the amendment. The requirement that there be an indictment would become effective whenever the authorized punishment is two hundred dollars or imprisonment for thirty days.[15]

A new section is proposed as an amendment to article VII.[16] The proposed amendment would authorize regional councils of government and would provide financial support therefor. This proposal could be of great advantage to densely populated areas where a consolidation of governmental functions would be beneficial, *e.g.*, Richland and Lexington counties, and Greenville and Spartanburg counties.

The proposed amendment to article XV further specifies persons subject to impeachment: "officials elected on a statewide basis, state judges, and other state officers as may be designated by law."[17] Impeachment would be limited to cases of "serious crimes" or "misconduct in office."[18]

12. 253 S.C. 209, 215, 169 S.E.2d 617, 619 (1969) *citing* Paris Mountain Water Co. v. City of Greenville, 110 S.C. 36, 53, 96 S.E. 545, 549 (1918) (emphasis added).
13. *See* Note, *Survey of Articles I-VII of the Proposed Draft for a Revised South Carolina Constitution*, 22 S.C.L. REV. 50 (1970).
14. *Id.*
15. *Compare Committee to Make a Study of the South Carolina Constitution of 1895*, FINAL REPORT, Art. I (1969), *with* S.C. CONST. art I, § 17 *and* R1222, H2466, April 21, 1970.
16. R1029, S509, March 31, 1970.
17. R1112, H2422, April 8, 1970.
18. *Id.*

Under a proposed change to article II there would be substituted for the present test requiring an ability to read and write the constitution a "reasonable" English literacy test. Recently literacy tests have been challenged and held void. In *Katzenbach v. Morgan*[19] the Voting Rights Act of 1965[20] was held to take priority over New York election laws requiring an ability to read and write English. The act allows one with a sixth grade education not to be disqualified, if he attends an American flag school in which the predominant language is other than English.

On March 24, 1970, the California court in *Castro v. State*[21] declared its constitutional provision requiring English literacy[22] unconstitutional, as it applies to persons literate in another language in which they could receive political information. The *Morgan* and *Castro* cases should cause the proposed article II, section 6 to be seriously questioned, for it appears that the proposed provision is no advancement from the present provision.

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19. 384 U.S. 641 (1966).
20. 42 U.S.C.A. § 1973b(e) (1970).
21. 85 Cal. Rptr. 20, 466 P.2d 244 (1970). It should be noted that a proposed amendment to the California constitution allowing literacy in either English or Spanish to suffice was proposed prior to the *Castro* decision. *See* WEST'S CAL. CONST. ANN. proposed amendment, art. II, § 1. But, the *Castro* decision did not limit political awareness to any particular language.
22. WEST'S CAL. CONST. ANN. art II, § 1 reads in the applicable part "[N]o person who shall not be able to read the Constitution in the English language and write his or her name, shall ever exercise the privileges of an elector in this state." *Compare* the South Carolina proposed amendment: "The General Assembly *may* require each person to demonstrate a reasonable ability . . . to read and write the English language as a condition to becoming entitled to vote." R1352, H2127, April 29, 1970 (emphasis added).