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September 11, 2015

Ralph J. Amos, Chairman
Forsyth County Board of Commissioners
110 East Main Street, Suite 210
Cumming, Georgia 30040

RE: Legal Opinion concerning House Bill 660—the proposed city charter for the City of Sharon Springs

Dear Mr. Chairman:

I have been asked to provide a legal opinion concerning House Bill 660, which proposes to incorporate the City of Sharon Springs as a “limited-service city” in Forsyth County, Georgia. The specific question posed is whether the proposed charter of Sharon Springs, as presented through House Bill 660, complies with the Georgia Constitution. As explained below, my opinion is that House Bill 660 violates the Georgia Constitution. But with that said, it is also my opinion that if passed, House Bill 660 would establish Sharon Springs as a Georgia municipality—just without the power and service restrictions contained in House Bill 660.

1. Georgia law concerning the powers and services that are available to cities to exercise and provide.

Generally speaking, a city is created when the General Assembly passes a local law, which, in effect, approves the city charter. *See* O.C.G.A. § 36-35-2(a); *see also* *City of Atlanta v. City of College Park*, 311 Ga. App. 62, 66 n.11 (2011) (“a city charter is a local law, not a general law”). In contrast to a city charter that is local in nature and only applies to that specific city, a general law is one that applies uniformly across the state. *See* Ga. Const., Art III, Sec. VI, Para. IV (“Laws of a general nature shall have uniform operation throughout this state....”). This distinction between local laws and general laws is important with respect to how the General Assembly can restrict municipal powers and services.

The Georgia Constitution specifically lists 14 powers and services that a municipality may exercise or provide. *See* GA. CONST., Art. IX, Sec. II, Para. III (a) (“In addition to and supplementary of all powers possessed by or conferred upon any county, municipality, or any combination thereof, any county, municipality, or any combination thereof may exercise the following powers and provide the following services”). This constitutional provision is referred to as the “Supplementary Powers Clause.”

After identifying what powers and services a municipality may exercise or provide, the Supplementary Powers Clause states that the General Assembly may regulate, restrict, or limit the powers and services that municipality may exercise or provide by “**general law**.” GA. CONST., Art. IX, Sec. II, Para. III(c) (emphasis added). But the Georgia Constitution explicitly prohibits the General Assembly from “withdraw[ing] any such powers”—regardless of whether

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the withdrawal is attempted through a general law or a local law. *Id.* According to the Attorney General of Georgia, “[t]he purpose of the [Supplementary Powers Clause] is to provide uniformity of municipal powers which the General Assembly may not remove ... in a random fashion.” Ga. Op. Atty. Gen. No. U94-8 (1994).

Thus, the General Assembly may regulate, restrict, or limit the powers and services of a municipality through a general law—i.e., a law that applies uniformly across the State—but it cannot withdraw any of the enumerated powers or services available to municipalities absent a constitutional amendment.

2. Application of the Supplementary Powers Clause to House Bill 660.

While no reported Georgia opinion has discussed or examined the Supplementary Powers Clause in the context of a “limited-service city,” the plain terms of the Supplementary Powers Clause itself shows that the General Assembly may regulate, restrict, and/or limit the powers and services of municipalities through a **general law**. And the General Assembly has exercised this constitutional power. For example, the General Assembly recently passed the Sunday sales legislation, which regulates how counties and municipalities may locally approve the sale of alcohol on Sundays and differentiates the approval procedure based on the population of the county or municipality. Compare O.C.G.A. § 3-3-7(b) (establishing Sunday sales approval procedure for county “having a population of 800,000 or more”) with O.C.G.A. § 3-3-7(d) (establishing Sunday sales approval procedure for county “having a population of not less than 153,000 nor more than 165,000”). These are general laws, which “regulate, restrict, and/or limit” how municipalities can approve Sunday sales and apply uniformly across the state of Georgia.

But the question here is whether the General Assembly can pass a local law—a city charter—that explicitly limits the scope of the powers and services to accomplish (1) planning and zoning, (2) code adoption and enforcement, and (3) solid waste management services. There is a question as to whether city charters, like proposed House Bill 660, “limit” the powers and services of a municipality or if such charters “withdraw” those powers and services so that they are no longer available. See MERRIAM-WEBSTER DICTIONARY (defining withdraw as “to take (something) back so that it is no longer available”) (available at <http://www.merriam-webster.com/dictionary/withdraw>). A strong argument can be made that House Bill 660 “withdraws” powers and services from the City of Sharon Springs because a city must act consistently with its charter. See O.C.G.A. § 36-35-3(a).¹ The powers and services enumerated by the Supplementary Powers Clause that are not also contained in the charter are no longer available to the City of Sharon Springs; thus, those powers and services have been “withdrawn.”

¹ Under the Home Rule Statute, “The governing authority of each municipal corporation shall have the legislative power to adopt clearly reasonable ordinances, resolution, or regulations relating to its property, affairs, and local government for which no provision has been made by general law and which are not inconsistent with the Constitution or any charter provision applicable thereto.” O.C.G.A. § 36-35-3(a).

But even if House Bill 660 was viewed as “limiting, restricting, or regulating” the powers and services of the City of Sharon Springs, House Bill 660 nonetheless violates the Supplementary Powers Clause of the Georgia Constitution because the General Assembly can only place “limitations” on a municipality through general law. It is undisputed that city charters are local laws. See *City of Atlanta*, 311 Ga. App. at 66 n.11 (“a city charter is a local law, not a general law”). Thus, because House Bill 660 is not a general law, it violates the Georgia Constitution.

3. Assuming the General Assembly passes House Bill 660 with its constitutional infirmities, is the local law entirely void or does the City of Sharon Springs exist without the restrictions placed on it by the local law?

While it is preferable to pass a local law that has no constitutional problems, if—for political or other reasons—House Bill 660 is approved by the General Assembly as currently presented, it is likely that the unconstitutional provisions—the power and service restrictions—would be severed from the city charter. See *Brown v. City of Marietta*, 220 Ga. 826, 829-30 (1965) (citing *Hancock v. State*, 114 Ga. 439 (1901); *Bass v. Lawrence*, 124 Ga. 75 (1905); *Edalgo v. Southern Ry. Co.*, 129 Ga. 258 (1907); *Lee v. Tucker*, 130 Ga. 43 (1908); *Sister Felicitas v. Hartridge*, 148 Ga. 832 (1919)).

In *Brown*, a charter provision that exempted all personal and real property used for agricultural purposes from municipal taxation was deemed unconstitutional and void. 220 Ga. at 829. But without referencing a severability clause that may or may not have been contained in the charter, the Supreme Court of Georgia severed the unconstitutional provision of the charter and allowed the valid provisions of the charter—and thus the municipality—to remain in existence: “The invalidity of a charter provision purporting to exempt property used for agricultural purposes from taxation does not vacate, annul, or repeal the valid charter provisions of the city or municipality.” *Id.*

Here, House Bill 660 contains no severability clause to sever any void provisions while leaving the remaining in tact. That would be preferable since “the presence of a severability clause in an Act reverses the usual presumption that the legislature intends the Act to be an entirety, and creates an opposite presumption of separability.” *City Council of Augusta v. Mangelly*, 243 Ga. 358, 363 (1979). But based on *Brown*, even without a severability clause, it is likely that “the invalidity” of the restrictions in the charter do not “vacate, annul, or repeal the valid charter provisions” of the City of Sharon Springs. Thus, it is likely that the City of Sharon Springs will remain as a recognized municipality of the state of Georgia if the power and service restrictions are deemed unconstitutional—but with the unconstitutional provisions of its charter no longer in effect.

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Should you or the rest of the Commission have any questions, do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Norman S. Fletcher". The signature is written in a cursive style with a long, sweeping tail that loops back under the name.

Norman S. Fletcher

cc: Ken Jarrard, Esq.