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OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

April 6, 1998

Robert A. Morales, Research Analyst
Ways and Means Committee
South Carolina House of Representatives
P.O. Box 11867
Columbia, South Carolina 29211

RE: Informal Opinion

Dear Mr. Morales:

Your opinion request has been forwarded to me for reply. You have asked for this Office's opinion as to the constitutionality of H.4695. This Bill would amend Article 3, Chapter 37, Title 12 of the South Carolina Code of Laws, relating to assessment of property taxes by adding Section 12-37-224. H.4695 provides as follows:

SECTION 1. Article 3, Chapter 37, Title 12 of the 1976 Code is amended by adding:

"Section 12-37-224. (A) For purposes of ad valorem taxation, and in addition to the provisions of Section 12-43-280, the fair market value of owner-occupied residential property assessed pursuant to Section 12-43-220(c) may not increase more than an amount equal to the value of permanent improvements, as defined by the Department of Revenue, made by the owner-occupant after acquiring title and the percentage increase in the assessed value of all taxable properties in the county in the year immediately preceding a countywide reassessment and the year of a countywide reassessment.

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(B) When the property is transferred, other than between spouses, the county assessor shall determine the fair market value of the property in the hands of the transferee, effective as of the date of transfer. If the transferee qualifies as an owner-occupant, fair market value may be increased during his term of ownership only in accordance with subsection (A).

When considering whether an Act of the General Assembly is unconstitutional, a court is governed by the guidelines set forth in Cox v. Bates, 237 S.C. 198, 116 S.E.2d 828 (1960), as follows:

The supreme legislative power of the State is vested in the General Assembly; the provisions of our State Constitution are not a grant but a limitation of legislative power, so that the General Assembly may enact any law not expressly, or by clear implication, prohibited by the State or Federal Constitution; a statute will, if possible, be construed so as to render it valid; every presumption will be made in favor of constitutionality of a legislative enactment; and a statute will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution.

While this Office may comment upon potential constitutional problems, it is solely within the province of the courts of this State to declare an act unconstitutional.

I have reviewed H.4695 and there appears to be two areas of constitutional concern. The first area of constitutional concern is Article X, Section 1 of the State Constitution, which provides in pertinent part as follows:

The General Assembly may provide for the ad valorem taxation by the State or any of its subdivisions of all real and personal property. The assessment of all property shall be equal and uniform in the following classifications:

...

(3) The legal residence and not more than five acres contiguous thereto shall be taxed on an assessment equal to four percent of the fair market value of such property.

It appears that the method of taxation found in H.4695 may not be equal and uniform. Under H.4695, an increase in the fair market value of owner-occupied residential property would be tied to the value of permanent improvements and the percentage increase of all taxable properties in the county, rather than the property's actual value. Thus, while this Office cannot declare the statute, if enacted, to be unconstitutional, an argument could be made by one attacking the constitutionality of the statute that it lacks uniformity and is not based upon actual value. The constitutional attack would be based most likely upon the argument that the tax burden would inequitably fall upon those homeowners at the lower end of the economic scale. In other words, the tax burden would not be dollar for dollar. Thus, while the purpose of the legislation is laudable in providing tax relief, the literal language of the Constitution may well provide a problem if the statute is subsequently attacked in court.

The second area of constitutional concern is Article III, Section 29 of the State Constitution, which provides as follows:

All taxes upon property, real or personal, shall be laid upon the actual value of the property taxed, as the same shall be ascertained by an assessment made for the purpose of laying such tax.

Actual value denotes the true market value of the property. Lee County v. Stevens, 277 S.C. 421, 289 S.E.2d 155 (1982).

As previously stated, H.4695 does not tie the increase in the fair market value of the property to the property's actual value. Consequently, the taxes would not be laid upon the actual value of the property taxed as required by the Constitution. Therefore, it may be possible for one challenging the constitutionality of the statute to argue that it violates the "actual value" requirement of the State Constitution.

Finally, I reiterate that this Office must presume H.4695, if enacted, to be constitutional. Consequently, the statute would have to be followed until a court of competent jurisdiction declares otherwise.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the

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specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,

Paul M. Koch

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Assistant Attorney General