

The State of South Carolina



Office of the Attorney General

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March 30, 1992

Mark R. Elam, Esquire
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Office of the Governor
Post Office Box 11369
Columbia, South Carolina 29211

Dear Mr. Elam:

By your letter of March 26, 1992, you have asked for the opinion of this Office as to the constitutionality of H.4546, R-323, an act to create the Fairfield County Economic Development Board and to provide for its members and terms, purposes, powers, and duties. For the reasons following, it is the opinion of this Office that the Act is of doubtful constitutionality.

In considering the constitutionality of an act of the General Assembly, it is presumed that the act is constitutional in all respects. Moreover, such an act will not be considered void unless its unconstitutionality is clear beyond any reasonable doubt. Thomas v. Macklen, 186 S.C. 290, 195 S.E. 539 (1937); Townsend v. Richland County, 190 S.C. 270, 2 S.E.2d 777 (1939). All doubts of constitutionality are generally resolved in favor of constitutionality. 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.

The act bearing ratification number 323 of 1992 would create the Fairfield County Economic Development Board, provide for its members, and set forth its purpose, powers, and duties. The act affects only Fairfield County and is

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the type of enactment authorized to be undertaken by a county council under home rule. See S.C. Code Ann. § 4-9-30(6). Thus, H.4546, R-323 of 1992 is clearly an act for a specific county. Article VIII, Section 7 of the Constitution of the State of South Carolina provides that "[n]o laws for a specific county shall be enacted." Acts similar to H.4546, R-323 have been struck down by the South Carolina Supreme Court as violative of Article VIII, Section 7. See Cooper River Parks and Playground Commission v. City of North Charleston, 273 S.C. 639, 259 S.E.2d 107 (1979); Torgerson v. Craver, 267 S.C. 558, 230 S.E.2d 228 (1976); Knight v. Salisbury, 262 S.C. 565, 206 S.E.2d 875 (1974).

Based on the foregoing, we would advise that H.4546, R-323 would be of doubtful constitutionality. Of course, this Office possesses no authority to declare an act of the General Assembly invalid; only a court would have such authority.

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

Robert D. Cook

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