

The State of South Carolina

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May 18, 1992

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

Dear Mr. Elam:

By your letter of May 14, 1992, you have asked for the opinion of this Office as to the constitutionality of S.1347, R-415, an act amending Act No. 902 of 1964, relative to the Abbeville County Historic Preservation Commission. 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 415 of 1992 amends Act No. 902 of 1964, to delete the requirement that members of the Abbeville County Historic Preservation Commission be recommended by certain municipalities, to authorize the Commission to elect a secretary and treasurer rather than a secretary-treasurer, to authorize officers to succeed themselves under certain conditions, and to substitute

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county council for the delegation as the entity which may appropriate money to the Commission. A review of Act No. 902 of 1964 reveals that it affects only Abbeville County. Thus, S.1347, R-415 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 S.1347, R-415 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.1347, R-415 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/ss

REVIEWED AND APPROVED BY:


Robert D. Cook
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