

# The State of South Carolina



## Office of the Attorney General

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June 8, 1988

Burnet R. Maybank, III  
Legal Counsel to the Governor  
Office of the Governor  
Post Office Box 11369  
Columbia, South Carolina 29211

Dear Mr. Maybank:

You have asked that this Office examine several portions of the 1988-89 Appropriations Act and opine as to potential constitutional difficulties. After a brief discussion of the general law relative to interpretation of statutes in light of constitutional requirements, each of the provisions will be discussed.

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.

Provisos 67.1 and 67.2

Provisos number 67.1 and 67.2, contained in the appropriation for the South Carolina Wildlife and Marine Resources Department, devolve certain approval procedures upon the legislative delegations of the respective counties before expenditure of certain funds may be made. These provisos are virtually identical to Part I, Sections 67.1 and 67.2 of Act No. 170 of 1987 and provisos contained in Part I, Section 67 of Act No. 540 of 1986, neither of which were vetoed by the Governor.

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The potential constitutional problems in provisos or statutes of this nature were identified in opinions of this Office dated October 24, 1979 and July 26, 1984, copies of which are enclosed. You will note that in the latter opinion, we recommended that judicial or legislative clarification be sought; and until such legislative or judicial action should be taken, we recommended that the statute in question be followed. Our recommendations are the same with respect to provisos 67.1 and 67.2.

Proviso 125.14

Proviso number 125.14, contained in the appropriations for Subdivisions, reduces certain aid to Berkeley County by a specified amount to be used to fund a certain position of Field Technician III for Berkeley County. We note that this proviso is identical to proviso number 125.14 of Act No. 170 of 1987, which proviso was not vetoed by the Governor.

This proviso may be viewed in either of two ways. Because the proviso affects only Berkeley County, it could be construed as an act for a specific county and thus violative of Article VIII, Section 7 of the State Constitution. However, the proviso may also be viewed as a special provision within a general law, the adoption of which is permitted by Article III, Section 34(X) of the State Constitution. Due to this doubt as to unconstitutionality, we must resolve the doubt in favor of upholding the constitutionality.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*  
Patricia D. Petway  
Assistant Attorney General

PDP:sds

Enclosures

REVIEWED AND APPROVED BY:



ROBERT D. COOK  
EXECUTIVE ASSISTANT FOR OPINIONS