

The State of South Carolina



Office of the Attorney General

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June 3, 1988

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Dear Mr. Elam:

By your letter of June 2, 1988, you have asked for the opinion of this Office as to the constitutionality of S.1461, R-732, an act changing the method of appointment of members of the Newberry County Water and Sewer Authority and providing for terms of office for new members of the Authority appointed pursuant to the act. 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 amends Section 2 of Act No. 119 of 1963, as amended by Act No. 190 of 1969 and provides that the governing body of the Newberry County Water and Sewer Authority shall consist of seven resident electors of Newberry County to be appointed by the Governor upon the recommendation of a majority of the Newberry County Council. Terms of the present members are to expire upon the effective date of the act, and a scheme for

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expiration of terms of the new members is established. Section 1 of Act No. 119 of 1963 describes the service area of the Authority to be all of Newberry County, excluding any area within an incorporated municipality. Thus, S.1461, R-732 of 1988 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.1461, R-732 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 S.1461, R-732 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.

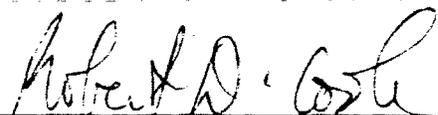
Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



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