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# The State of South Carolina



## Office of the Attorney General

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June 2, 1988

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

Dear Mr. Elam:

By your letter of May 31, 1988, you have asked for the opinion of this Office as to the constitutionality of H.4257, R-690, an act enlarging the service area of the Chester Fire District of Chester County. 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.

H.4257, R-690 amends Act No. 1779 of 1972 to enlarge the service area of the Chester Fire District. The entire service area of the District as newly comprised appears to be entirely within Chester County. Thus, H.4257, R-690 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

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H.4257, R-690 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).

In addition, it must be noted that Article III, Section 34 of the State Constitution prohibits the enactment of special or local laws. Section 34(IX) particularly provides, "where a general law can be made applicable, no special law shall be enacted." A general law, Section 6-11-410 et seq. of the Code of Laws of South Carolina (1976), already provides a mechanism whereby the boundaries of a district such as the Chester Fire District may be enlarged. H.4257, R-690 is therefore constitutionally suspect on this basis, as well.

Based on the foregoing, we would advise that H.4257, R-690 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

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REVIEWED AND APPROVED BY:

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