

# The State of South Carolina



## Office of the Attorney General

**T. TRAVIS MEDLOCK**  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE 803-734-3970

May 9, 1988

Mark R. Elam  
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 9, 1988, you have asked for the opinion of this Office as to the constitutionality of H.4131, R-584, an act enlarging the service area of the Dalzell Water District of Sumter 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.4131, R-584 amends Act No. 149 of 1965 to enlarge the service area of the Dalzell Water District. An examination of the service area delineated in the act, on a general highway map of Sumter County, shows the entire service area to be located within Sumter County. Thus, H.4131, R-584 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

Mr. Elam  
Page 2  
May 9, 1988

H.4131, R-584 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 Dalzell Water District may be enlarged. H.4131, R-584 is therefore constitutionally suspect on this basis, as well.

Based on the foregoing, we would advise that H.4131, R-584 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*

Robert D. Cook  
Executive Assistant for Opinions