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Office of the Attorney General

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July 1, 1986

The Honorable Nell W. Smith
Senator, District No. 2
Post Office Box 68
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Dear Senator Smith:

By your letter of June 17, 1986, you have asked for the opinion of this Office as to the status of Act No. 755, 1973 Acts and Joint Resolutions, which act created the Pickens County Commission on Alcohol and Drug Abuse. Subsequently, Pickens County Council adopted Ordinance No. 32, which also established a Pickens County Commission on Alcohol and Drug Abuse. You have advised that Pickens County Council is considering the repeal of its ordinance and may return to the provisions of Act No. 755 if that act is still viable.

Act No. 755 of 1973 became effective on April 27, 1973. The Home Rule Act, No. 283 of 1975, was adopted several years later and contained the following provision in Section 3:

All operations, agencies and offices of county government, appropriations and laws related thereto in effect on the date the change in form becomes effective shall remain in full force and effect until otherwise implemented by ordinance of the council pursuant to this act. Provided, however, that county councils shall not enact ordinances in conflict with existing law relating to their respective counties and all such laws shall remain in full force and effect until repealed by the General Assembly, or until January 1, 1980, whichever time is sooner

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We have not located an act of the General Assembly repealing Act No. 755 of 1973.

Ordinance No. 32 of Pickens County became effective on December 17, 1979. Nowhere within the ordinance does it appear that Act No. 755 was repealed by Pickens County Council; with only minor exceptions, the provisions of Act No. 755 were continued in force by the ordinance. In accordance with opinions of this Office dated June 22, 1981 and June 22, 1979, construing nearly identical situations, it appears that Act No. 755 would remain in effect.

While the research for this opinion was in progress, the South Carolina Supreme Court handed down a decision in Graham v. Creel, Op. No. 22582, filed June 23, 1986. Horry County had a special law establishing the Horry County Police Commission in effect when its form of home rule government was adopted. After January 1, 1980, Horry County Council modified the act of the General Assembly and abolished the Police Commission. An argument was made that the local legislation lapsed as of January 1, 1980, but the court decided that point negatively, stating that the local law remained in effect until Horry County enacted an ordinance abolishing the Police Commission and repealing the act of the General Assembly. Since the situation is similar to the issue you have raised, we are enclosing a copy of the decision for your information. Graham would also permit the conclusion that Act No. 755 is still viable.

Because Act No. 755 was special legislation for Pickens County, Council would be authorized, after January 1, 1980, to modify that legislation. See Ops. Atty. Gen. dated August 21, 1978 and August 1, 1979; Graham v. Creel, supra. Furthermore, Section 4-9-170, Code of Laws of South Carolina (1976, as revised), would authorize Council to make appointments to the Commission, should Council wish to once again follow the terms of Act No. 755 but change the method of appointment of members. Of course, the determination to reactivate the act, create a new county agency on its own initiative, or the designation of an eleemosynary corporation as the sole county agency pursuant to Section 61-5-320 of the Code rests with Pickens County Council.

There is a potential constitutional problem with Act No. 755, which became effective, as noted, on April 27, 1973. Article VIII, Section 7 of the State Constitution became effective March 7, 1973 and provides that "[n]o laws for a specific county shall be enacted." Because the act was adopted

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after Article VIII, Section 7 became effective, the constitutionality of the act would be questionable. 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); Spartanburg Sanitary Sewer District v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984).

In this regard, we would also advise that the constitutionality of an act of the General Assembly is presumed, in all respects. 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.

If Pickens County Council desires to follow the provisions of Act No. 755 but avoid the potential constitutional difficulties, one option would be to adopt an ordinance which embodies the provisions of the act, more so than Ordinance No. 32 does presently, thus making the Alcohol and Drug Abuse Commission a creation of Council rather than the General Assembly. We are not aware of any court decision declaring Act No. 755 to be unconstitutional, however, and unless and until such a determination is made, constitutionality is presumed. The final decision remains with Pickens County Council, in any event.

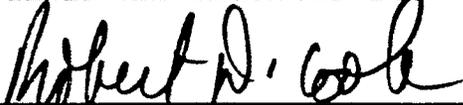
We trust that the foregoing has adequately responded to your inquiry. Please advise if you need clarification or additional assistance.

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosures

REVIEWED AND APPROVED BY



Robert D. Cook
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