

The State of South Carolina



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September 9, 1986

The Honorable John Courson
Member, South Carolina State Senate
P. O. Box 11619
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Dear Senator Courson:

You have requested the advice of this Office as to the constitutionality of Act 611, Acts and Joint Resolutions of South Carolina, 1984. This law provides in part that "...merger or alteration of the boundaries within Richland County of the school districts situated in whole or in part in Richland County may be accomplished only by a majority vote approving the merger or the altered boundary lines by the members of the Richland County Legislative Delegation elected and serving at the time of the vote." 1/ The law further provides that the delegation may provide for an advisory referendum on the matter prior to acting on any proposed merger or alteration of boundary lines.

Only a court has the authority to declare a statute unconstitutional. Moreover, a "...statute will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond reasonable doubt." South Carolina National Bank v. Central Carolina Livestock Market, Inc., (South Carolina Supreme Court, Opinion #22566, June 9, 1986). Under this strict presumption of constitutionality, case law indicates that a court, nevertheless, most probably would conclude that the above portion of Act 611 is an unconstitutional delegation of authority to the Legislative Delegation. Gunter v. Blanton, 259 SC 436, 192 S.E.2d 473 (1972).

The authority granted to the Richland County Delegation by Act 611 appears to be very similar to the authority granted to legislative delegations to approve school tax millage which was found to be unconstitutional pursuant to the separation of powers provisions of Article I, §8 by the Supreme Court in Gunter, supra and Aiken County Board of Education v. Knotts, 274 SC 144, 262

1/ General provisions for the alteration of school district boundary lines and the consolidation of districts are set forth in §§59-17-20 through 59-17-80 of the Code of Laws of South Carolina, (1976).

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S.E.2d 14 (1980). The following holdings are from these cases are relevant here:

"The Act is not and cannot authorize the members of the delegation to participate in this determination [of local school tax millage] as legislators, for they may exercise legislative power only as members of the General Assembly." 192 S.E.2d at 475. See State ex rel McLeod v. McInnis, 278 SC 307, 295 S.E.2d 633 (1982).

"As a general rule, the legislature, may not, consistently with the constitutional requirement here involved, undertake to both pass laws and execute them by setting its own members to the task of discharging such functions by virtue of their office as legislators....As the functions of the Legislative Delegation [as to Aiken County school tax millage] are not incidental to or comprehended within the scope of legislative duties, the separation of powers doctrine as provided by Article I, §8 has clearly been violated." Knotts, 262 S.E.2d at 17.

Because the functions of the delegation in approving mergers and alterations of boundary lines appear to be comparable to the kind of authority found invalid in Gunter and Knotts, this case law indicates that a court most probably would conclude that Act 611 is unconstitutional as to those functions. These conclusions are consistent with a previous opinion of this Office that expressed doubt as to the constitutionality of the authority given to legislative delegations in authorizing the alteration of school district boundary lines under one of the methods set forth in the general law. See §59-17-20 (2)(a) of the Code and Ops. Atty. Gen., (June 8, 1981), see also footnote 1/.

Your letter questioned whether Act 611 was consistent with constitutional provisions concerning "home rule" and restricting special legislation. See respectively Article VIII and Article III, §34 of the Constitution of South Carolina. These constitutional provisions do not appear to have been violated by Act 611. In Moye v. Caughman, 265 SC 140, 217 S.E.2d 36 (1975), the South Carolina Supreme Court held that the creation of different provisions for school districts does not impinge upon the "home rule" amendment because public education is not the duty of the counties, but of the General Assembly. Moye, also noted that prior cases indicated that the special legislation provisions of Article III, §34 do not deal with education matters specifically covered by the public education provisions of Article XI of the Constitution. Therefore, because it applies to education matters, Act 611 does not appear to violate

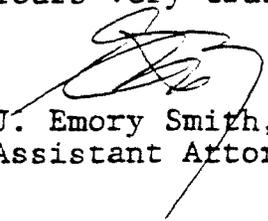
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either the "home rule" or "special legislation" provisions of the Constitution; however, as noted above, the merger and alteration provisions of Act 611 appear to violate Article I, §8.

In conclusion, although Act 611 is entitled to a strict presumption of constitutionality, case law indicates that a court would most probably conclude that the portion of this law concerning the approval of mergers and the alteration of boundary lines is an unconstitutional delegation of authority to the Legislative Delegation. Other portions of this law are not addressed in this letter.

If I may be of further assistance, please let me know.

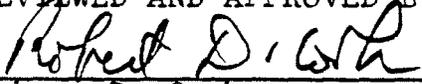
Yours very truly,



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