

The State of South Carolina



Office of the Attorney General

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June 8, 1987

Mark R. Elam, Counsel to the Governor
Office of the Governor
Post Office Box 11369
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Dear Mr. Elam:

By your letter of June 4, 1987, you have asked that this Office examine H.2792, R-197 and opine as to its constitutionality. This act repeals Act No. 1027, 1966 Acts and Joint Resolutions, and transfers all assets of the Dillon County Historic Preservation Commission to the Dillon County Theater Association.

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. Notwithstanding these presumptions, it appears that H.2792, R-197 may be constitutionally infirm.

The act under consideration pertains only to Dillon County, since the entities affected are the Dillon County Historic Preservation Commission and the Dillon County Theater Association. Likewise, Act No. 1027 of 1966, which is being repealed, created the Dillon County Historic Preservation Commission, an entity solely within Dillon County. Dillon County is thus the only county affected by this act.

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Article VIII, Section 7 of the State Constitution provides in pertinent part that "[n]o laws for a specific county shall be enacted" Acts similar to H.2792, R-197 have been struck down by the South Carolina Supreme Court as violative of Article VIII, Section 7 in cases such as 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 H.2792, R-197 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.

With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
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