

1983 WL 181911 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 8, 1983

**\*1 SUBJECT: House Bill 2773**

House Bill 2773 is unconstitutional special legislation under the provisions of [Article III, § 34 of the South Carolina Constitution](#).

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QUESTION:

Whether proposed House Bill 2773 is unconstitutional special legislation?

AUTHORITIES:

[Constitution of South Carolina, Article III, § 34](#) [Knight v. Hollings](#), 242 S.C. 1, 129 S.E.2d 746 (1963) [Shillito v. Spartanburg](#), 214 S.C. 11, 51 S.E.2d 95 (1948) [United States Fid. & Guar. Co. v. City of Columbia](#), 252 S.C. 55, 165 S.E.2d 272 (1969)

DISCUSSION:

House Bill 2773 directs the Department of Highways and Public Transportation to pave a parcel of land adjacent to the fire station in St. Andrews Public Service District in Charleston County. Given the specific, local nature of the bill, it is the opinion of this office that it is in conflict with the South Carolina Constitution, which prohibits ‘special legislation.’

[Article III, § 34, of the South Carolina Constitution](#) lists several specific areas in which local or special laws are expressly prohibited, and states in subdivision IX: ‘In all other cases, where a general law can be made applicable, no special law shall be enacted . . .’

For local and special legislation to be valid, there must be a substantial distinction, having reference to the subject matter of the proposed legislation, between the places embraced in such legislation and the places excluded. The Supreme Court has stated: The marks of distinction upon which the classification is founded must be such, in the nature of things, as will in some reasonable degree, at least, account for or justify the restriction of the legislation.

[Shillito v. Spartanburg](#), 214 S.C. 11, 51 S.E.2d 95, 98 (1948). For a local or special statute to be valid, there must be some peculiar local condition requiring special treatment. See also [USF&G v. City of Columbia](#), 252 S.C. 55, 165 S.E.2d 272 (1969).

In [Knight v. Hollings](#), 242 S.C. 1, 129 S.E.2d 746 (1963), the Supreme Court declared unconstitutional a similar statute which authorized local officials in Dorchester County to designate roads for surfacing under the ‘C’ fund program by the Department. After analyzing the history and effect of [Article III, § 34](#), the Supreme Court held that this Act was special legislation prohibited by the Constitution. The Court also held that the legislation in question in [Knight](#) was not authorized by [Article II of Amendments to the Constitution](#). This Constitutional Amendment reads as follows;

The General Assembly of this State may enact focal or special laws concerning the laying out, opening, altering, or working roads or highways, and concerning the providing the age at which citizens shall be subject to road duty, and concerning drainage.

In addressing the impact of this Amendment, the Court stated that ‘to lay out, open, alter or work a road is one thing; to control the State Highway Department in the selection of roads for hard surfacing in its system is quite another.’ [Article II of the Amendments to the Constitution](#) would not authorize House Bill 2773 since the paving in that piece of legislation is not a road or highway.

\*2 In applying these constitutional guidelines, it is clear that the House Bill 2773 is unconstitutional special legislation. A single specific fire station in Charleston County is included and all other fire stations are excluded. No reason or explanation for this distinction is provided. There is no indication of a peculiar local condition which requires this type of special legislative treatment. Both the classification and the object are indisputably local and special in nature. Similar attempts to have paving decisions of the Department in one location being made in a different manner than other areas have been struck down. There is no apparent reason why a general law may not be made applicable to such situations.

CONCLUSION:

House Bill 2773 violates [Article III, § 34, of the South Carolina Constitution](#) because its attempts to limit its provisions to a particular fire station in Charleston County when it appears that there is no peculiar local condition reasonably justifying such action and when it appears that the subject is one in which a general law can be made applicable.

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