1973 WL 27749 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
June 22, 1973

***1 H-1489**

The Honorable Isadore E. Lourie
Senator
Richland County
Post Office Box 4069
Columbia, South Carolina 29240

Dear Senator Lourie:
You have inquired as to the constitutionality of H-1489 relating to the Municipal Court of the City of Columbia so as to "provide for jurisdiction and sentences therein." The Bill would have the effect of adding important judicial powers to the Municipal Court of Columbia by authorizing it to try State or common-law offenses committed within the corporate limits of the City of Columbia where the penalty does not exceed two hundred dollars or service of a term not exceeding thirty days in jail and to authorize suspension of sentences imposed by the court.

It is my opinion that such a statute as contemplated by the Bill would be unconstitutional.

In reaching this conclusion, I have considered, in particular, Article III, Section 34, of the Constitution of South Carolina, which prohibits a special law where a general law can be made applicable, Article VIII of the Constitution, ratified March 7, 1973, as well as Article V of the Constitution, ratified April 4, 1973. The cases cited below were decided under Article III, Section 34, of the Constitution of South Carolina, together with nearly similar provisions of the present Article VIII of the Constitution, but primarily in consideration of the former Article V of the Constitution which has, since April 4, 1973, been changed in vital respects. The latter constitutional provision is of primary concern here.
Article I, Section 5, provides, in part:

"The judicial power shall be vested in a unified judicial system which shall include—and such other courts of uniform jurisdiction as may be provided for by general law."

Article II, Section 22, provides:

"Notwithstanding the provisions of this Article, any existing court may be continued as authorized by law until this Article is implemented pursuant to such schedule as may be hereafter adopted."

The meaning to be given Section 22 may be subject to bona fide dispute but I adopt the construction apparently given to that section by the General Assembly as reflected in Act R-205, approved March 28, 1973, which reads:
"Section 1. All courts in existence in this State on the effective date of the ratification of Article V of the State Constitution, —shall continue in existence with all the powers and duties vested in them prior to such ratification, until such time as the schedule, provided for in Section 22 of Article V has been implemented.

"Section 2. The provisions of Section 1 shall not be construed to mean that a court cannot be terminated by law prior to such implementation."

 © 2020 Thomson Reuters. No claim to original U.S. Government Works. 

The General Assembly has thus clearly read Section 22 of Article V as meaning that existing courts would be continued, but that they could only be vested with the authority which they possessed prior to the ratification of Article V (Judicial Amendment) which, as noted, took place on April 4, 1973. I presume that the General Assembly enacted this statute in accordance with what it considered to be the mandate imposed upon it by the constitutional provision to authorize the continuance of existing courts. It has, in so doing, declared that existing courts shall continue, but that they shall possess only the powers which they had prior to ratification of Article V. This legislative construction is entitled to utmost respect, and I follow it.

***2** In this view, H-1489 seeks to modify powers which the Municipal Court of the City of Columbia had prior to April 4, 1973, and, in my opinion, is unconstitutional as being in violation of Article V of the Constitution.

With best wishes,
Very truly yours,

Daniel R. McLeod
Attorney General

1973 WL 27749 (S.C.A.G.)

**End of Document**

© 2020 Thomson Reuters. No claim to original U.S. Government Works.