The State of South Carolina

Office of the Attorney General

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June 11, 1990

Mark R. Elam, Esquire
Senior Counsel to the Governor
Office of the Governor
Post Office Box 11369
Columbia, South Carolina 29211

Dear Mr. Elam:

By your letter of June 6, 1990, you have asked for the opinion of this Office as to the constitutionality of S.1585, R-669, an act establishing territorial jurisdiction of Orangeburg County magistrates in civil and criminal matters, providing for county-wide jurisdiction.

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.

Article V of the State Constitution vests the judicial power of this State in a unified judicial system. In Article V, Section 26, provision is made for appointment of magistrates, who are deemed to be a part of the unified judicial system. State ex rel. McLeod v. Crowe, 272 S.C. 41, 249 S.E.2d 772 (1978). That constitutional provision directs the General Assembly to provide for magistrates' terms of office and their civil and criminal jurisdiction.

Section 22-2-170 of the South Carolina Code of Laws (1976, as revised) provides in part that "[m]agistrates shall have jurisdiction throughout the county in which they are appointed." In addition, Section 22-3-520 provides that "[m]agistrates shall have and exercise within their respective counties all the powers, authority

and jurisdiction in criminal cases herein set forth." It appears that S.1585, R-669 is in keeping with the required uniformity of magistrates' territorial jurisdiction within a county and with Article V, Section 26 of the Constitution though it is arguable unnecessary in light of the cited statutes; the wisdom or necessity of adopting a particular enactment is not considered by this Office in construing that enactment, however.

It might be argued that S. 1585, R-669 is violative of Article III, Section 34 (IX) of the State Constitution. However, the courts have stated that this constitutional provision does not apply to legislation authorized by the Constitution to be adopted by the General Assembly. See, for examples, Ruggles v. Padgett, 240 S.C. 494, 126 S.E.2d 553 (1962)(which decision also noted that the court had a duty "to synchronize and not to nullify provisions in the Constitution," 240 S.C. at 509) and City of Columbia v. Smith, 105 S.C. 348, 89 S.E. 1028 (1916). Due to the presumption of constitutionality which would attach to S.1585, R-669, this Office would resolve any doubt as to constitutionality in favor of finding the act constitutional.

In conclusion, it is the opinion of this Office that, if challenged, S.1585, R-669 could pass constitutional muster on the basis of Article V, Section 26 of the State Constitution; such conclusion is not completely free from doubt but attempts to harmonize two constitutional provisions and gives deference to the presumption of constitutionality which attaches to any legislative enactment unless and until a court declares otherwise.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/nnw

REVIEWED AND APPROVED BY:

Robert D. Cook

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