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The State of South Carolina

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March 25, 1994

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

Dear Mr. Elam:

By your letter of March 23, 1994, you have asked for the opinion of this Office as to the constitutionality of H.4328, R-339, an act relating to the Glenn Springs-Pauline Rural Fire District of Spartanburg County. For the reasons following, it is the opinion of this Office that the Act is of doubtful constitutionality.

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.

The act bearing ratification number 339 of 1994, amending Act No. 768 of 1973 and Act No. 1 of 1975, increases the debt authorization for the Glenn Springs-Pauline Rural Fire District and further provides that this increase may not result in a fee or property tax increase without a favorable referendum. A review of the 1973 act, particularly § 3 in which the boundaries of the district are delineated, reveals that the Glenn Springs-Pauline Rural Fire District is located wholly in Spartanburg County. Thus, H.4328, R-339 of 1994 is clearly an act for a specific county. Article VIII, Section 7 of the Constitution of the State of South Carolina provides that "[n]o laws for a specific county shall be enacted." Acts similar to H.4328, R-339 have been struck down by the South Carolina Supreme Court as violative of Article VIII, Section 7. See Cooper River Parks and Playground Commission v. City of North Charleston, 273 S.C. 639, 259 S.E.2d

Request Letter

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); Hamm v. Cromer, 305 S.C. 305, 408 S.E.2d 227 (1991); Pickens County v. Pickens County Water and Sewer Authority, Op. No. 23981 filed in the Supreme Court January 10, 1994.

We observe that on January 30, 1975, this Office opined that Act No. 1 of 1975 was unconstitutional. Act No. 1 authorized this fire district to borrow not exceeding $50,000 in anticipation of taxes and pledge the full faith, credit, and taxing power of the district for the payment of the indebtedness. Therein, former Attorney General McLeod stated:

> A general law was enacted in 1974, pursuant to the provisions of Article VIII of the Constitution of this State, to provide procedures for the incurring of debt by special service districts (Act No. 926, approved February 21, 1974). [S.C. Code Ann. § 6-11-410 et seq., particularly § 6-11-810 et seq.]
>
> The bill before you is a special law which would provide a departure from a general law and, in my opinion, is unconstitutional as being in violation of the provisions of Article VIII of the Constitution.

The same reasoning would apply to the ratified act under consideration herein.

Based on the foregoing, we would advise that H.4328, R-339 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.

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

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REVIEWED AND APPROVED BY:

Robert D. Cook
Executive Assistant for Opinions