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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

March 13, 1997

The Honorable Yancey McGill  
Member, South Carolina Senate  
Post Office Box 759  
Kingstree, South Carolina 29556

Re: Informal Opinion

Dear Senator McGill:

Attorney General Condon has forwarded your recent opinion request to me for reply. You ask for this Office's opinion regarding the constitutionality of Act number 515 of 1996. This Act transfers the power of appointment from the Georgetown County Legislative Delegation to the governing body of Georgetown County.

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 (1938); 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.

Act 515 would devolve the authority for appointments and budgetary approvals for certain offices, boards, and commissions, from the joint legislative delegation of Georgetown County to the governing body of Georgetown County. Such appointment authority and subsequent budgetary approval to be transferred, upon the acceptance of Georgetown County Council, would include but would not be limited to the positions or offices of Forestry Board, Veterans Affairs, County Department of Social Services, Transportation Committee, Department of Disabilities and Special Needs, Foster Care

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Review Board, Mental Health Center Board, Horry-Georgetown Commission for Technical Education, Economic Opportunity Commission, Georgetown Pilotage Commission, Murrell's Inlet-Garden City Fire District, Waccamaw Regional Planning Council, and the Board of Elections and Registration. Appointment of magistrates and the members of the Georgetown Water and Sewer District would be unaffected by this legislation. This act is clearly one which would affect only Georgetown County.

An analysis of this act reveals constitutional concerns in at least two respects. The first is Article VIII, Section 7 of the South Carolina Constitution, which provides in relevant part that "[n]o laws for a specific county shall be enacted." Acts similar to Act 515 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 107 (1979); Torgerson v. Craver, 267 S.C. 558, 230 S.E.2d 228 (1976); Hamm v. Cromer, 305 S.C. 305, 408 S.E.2d 227 (1991); Pickens County v. Pickens County Water and Sewer Authority, 312 S.C. 218, 439 S.E.2d 840 (1994). Thus, in light of Article VIII, Section 7, the constitutionality of Act 515 would appear to be doubtful.

Another constitutional concern is Article III, Section 34, which provides that the General Assembly shall not enact local or special laws on certain subjects. That section continues:

IX. In all other cases, where a general law can be made applicable, no special law shall be enacted: *Provided*, That the General Assembly may enact local or special laws fixing the amount and manner of compensation to be paid to the County Officers of the several counties of the State, and may provide that the fees collected by any such officer, or officers, shall be paid into the treasury of the respective counties.

X. The General Assembly shall forthwith enact general laws concerning said subjects for said purposes, which shall be uniform in their operations: *Provided*, That nothing contained in this section shall prohibit the General Assembly from enacting special provisions in general laws.

It is observed that Act 515 is not general in form. While a number of statutes relative to the affected appointments are listed in the body of the act, the act itself does not amend these statutes to create an exception for Georgetown County (i.e., no special provisions in general laws have been created); the Code Commissioner is given some authority to modify code sections which are inconsistent with this ratified act and to indicate in the notes following a code section that the county governing body has taken some action to accept appointment authority pursuant to this act.

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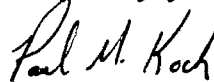
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Furthermore, Act 515 does not contain legislative findings to explain why Georgetown County requires special treatment or what peculiar circumstances may exist in Georgetown County that would justify special legislation. It is further observed that several acts similar to Act 515 have been adopted in 1995 and 1996, relative to Berkeley and Dorchester counties, which would be some indication that other counties have similar circumstances which could perhaps be addressed by a law more general in operation. The courts of this State have opined, however, that the legislature has sound discretion to decide when a general law can be made applicable, so that the courts are reluctant to interfere with that legislative discretion and set aside a local statute unless that discretion has been clearly and palpably abused. Townsend v. Richland County, supra. While the question is not free from doubt, I have some concerns as to the constitutionality of Act 515 relative to Article III, Section 34.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch

Assistant Attorney General