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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

March 29, 2005

The Honorable Joe Mahaffey
Member, House of Representatives
414-A Blatt Building
Columbia, SC 29211

Dear Representative Mahaffey:

You note that you have filed legislation, H.3728, and you seek an opinion concerning the constitutionality of this Bill. By way of background, you state the following:

> [t]his legislation, if approved would allow a Water Commissioner to be appointed from the Service Area and Taxing District, rather than just the Taxing District only. The water district is Startex-Wellford-Duncan (SJWD), House District # 36, Spartanburg County.
>
> The water district is strongly objecting to this bill and plan to take action to the SC Supreme Court. This bill may be contested on the Home Rule Legislation. The question is whether this legislation can stand up in the courts, provided it passes in the Senate and [is] ratified into law. (emphasis in original).

Law/Analysis

Of course, if H.3728 is enacted into law, it will carry a heavy presumption of constitutionality. A fundamental principle of constitutional law is that "[i]t is always to be presumed that the Legislature acted in good faith and within constitutional limits ...." Scroggie v. Scarborough, 162 S.C. 218, 160 S.E. 596, 601 (1931). The General Assembly is "presumed to have acted within ... [its] constitutional power." State v. Solomon, 245 S.C. 550, 572, 141 S.E.2d 818 (1965).

Moreover, our Court has often recognized that the powers of the General Assembly are plenary, unlike those of the federal Congress, whose powers are expressly enumerated. State ex rel. Thompson v. Seigler, 230 S.C. 115, 94 S.E.2d 231, 233 (1956). Accordingly, any act of the General Assembly must be presumed valid and constitutional. A statute will not be considered void unless its unconstitutionally is clear beyond a reasonable doubt. Thomas v. Macklen, 186 S.C. 290, 195 S.E. 539 (1937); Townsend v. Richland Co., 190 S.E. 270, 2 S.E.2d 779 (1939). Every doubt regarding an act of the General Assembly must be resolved favorably to the statute's constitutional validity. More than anything else, only a court and not this Office, may strike down an act of the General Assembly as unconstitutional. While we may comment upon an apparent conflict with the Constitution, we may not in an Attorney General's opinion declare the Act void. Put another way, a

statute "must continue to be followed until a court declares otherwise." Op. S.C. Atty. Gen., June 11, 1997.

Against this background that there exists a strong presumption of constitutionality regarding any act of the General Assembly, is that body of case law decided by our Supreme Court regarding Home Rule. Article VIII, § 7 of the Constitution of the State of South Carolina provides that "[n]o laws for a specific county shall be enacted." Our Supreme Court has applied this provision in a number of instances, striking down various enactments as violative of Art. VIII, §7. Some of these decisions have involved a statute relating to a particular water and sewer authority. See, Pickens County v. Pickens Co. Water and Sewer Authority, 312 S.C. 218, 439 S.E.2d 840 (1994); Hamm v. Cromer, 305 S.C. 305, 408 S.E.2d 227 (1991). In both Pickens County and Hamm, the Court refused to uphold legislation relating to a water and sewer authority on the basis of so-called "one-shot" legislation as part of the transition to Home Rule. Indeed, in Hamm, the Court stated that the enactment of a local law for a special purpose district (the date on which Article VIII was ratified and thus became effective)" is exactly the type of special legislation which is prohibited by Sections 1 and 7 of Article VIII of the South Carolina Constitution as it was not intended that after the ratification of the constitutional amendment, the General Assembly could repeatedly inject itself into local affairs." 305 S.C. at 308. See also, 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); Knight v. Salisbury, 262 S.C. 565, 206 S.E.2d 875 (1974).

The Court in Kleckley v. Pullliam, 265 S.C. 177, 217 S.E.2d 217 (1975) has recognized an exception for multi-county special purpose districts. In Kleckley, the Court addressed the issue of whether a 1975 act of the General Assembly authorizing the issue of general obligation bonds by the Richland-Lexington Airport District, a special purpose district created in 1962, was constitutional under Article VIII, § 7. In the view of the Court, the Act was not related to a specific county and was thus valid because the two-county airport district was a matter of state-wide importance and the subject matter extended beyond purely local concern. 217 S.E.2d at 221, 222. Relying on Kleckley, we opined that a 1979 legislative act related to the Western Carolina Regional Sewer Authority, a pre-1973 special purpose district serving Anderson, Greenville and Laurens Counties, was constitutional, given the regional nature of that authority. See, S.C. Op. Atty. Gen., February 5, 1985.

Furthermore, while the Court in Kleckley appeared not to have based its decision solely upon the fact that the special purpose district in that case encompassed more than one county, dicta from the Court in a subsequent decision indicates that the multi-county nature of the district is pivotal. In interpreting the powers of the Fort Hill Natural Gas Authority – created by the General Assembly in 1952 – the Court stated that "[i]f the [Fort Hill] Authority feels that [a portion of its enabling Act] is unwise or substantially interferes with its operation of the system, its proper recourse is to seek an amendment from the legislature." Fort Hill Natural Gas Authority v. City of Easley, 310 S.C. 346, 426 S.E.2d 787 (1993). The Fort Hill Court, citing Kleckley v. Pulliam, supra, further stated that "in that regard, we note that any amendment to this statute would not violate Article VIII,

Section 7 of the South Carolina Constitution, as the Authority extends beyond the confines of one county." 426 S.E.2d at 789.

Thus, based upon Kleckley and Fort Hill, we stated in an Opinion concerning the Donalds-Due West Water Authority that

> [i]f the defined service area [of the Donalds-Due West Water Authority] as provided in the Authority's enabling legislation, encompasses more than one county it is my opinion that the General Assembly most likely has the power to enact specific legislation related to the Authority.... If, on the other hand, the Authority's defined service area is confined to a single county, then it is my opinion that specific legislative action related to the Authority by the General Assembly would most likely be found by a reviewing court to be unconstitutional pursuant to the prohibitions of Article VIII, Section 7 and/or Article III, Section 34. [special legislation].

Op. S.C. Atty. Gen., July 31, 2003.

The same analysis as was deemed controlling in the July 31, 2003 opinion would also govern with respect to the constitutionality of H.3728. The Startex-Jackson-Wellford-Duncan Water District was created by Act No. 1105 of 1956. The District, by the terms of Act No. 1105 of 1956, is "created and established in Spartanburg County." It is our further understanding that the District's service area remains, even today following considerable growth over the past few years, solely within the boundaries of Spartanburg County. As stated above, unless the District is multi-county in nature-either in its geographical boundaries (tax area) or in its customer service area -- a court is most likely to conclude that H.3728 is violative of Article VIII, §7.

Conclusion

If enacted, H.3728 would be presumed to be constitutional and would be required to be followed unless and until declared invalid by a court. However, presuming that the service area of the Startex-Jackson-Wellford-Duncan Water District does not extend beyond the boundaries of Spartanburg County into another county, or it cannot be demonstrated that the District is a multi-county district, a court would likely conclude that H.3728 is violative of Art. VIII, § 7 of the South Carolina Constitution as a law "for a specific county."

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General

RDC/ph