



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

November 9, 2005

Kelly F. Zier, Esquire
New Ellenton City Attorney
502 West Avenue
North Augusta, South Carolina 29841

Dear Mr. Zier:

In a letter to this office you indicated that in 1974 local legislation was enacted giving the New Ellenton police department jurisdiction of the campus of the New Ellenton Middle School. Act No. 1135 of 1974 states:

The police department of the Town of New Ellenton in Aiken County shall have the same jurisdiction at the combined campus of the New Ellenton Junior High School and the Talatha Hawthorne Elementary School, which is located on Whiskey Road approximately one mile beyond the corporate limits of the town, as it has within the corporate limits of the town itself.

You have questioned whether such local law is effective as to give the New Ellenton police department jurisdiction on the grounds of the New Ellenton Middle School.

It appears that you are questioning whether such legislation is constitutional in light of the provisions of Article III, Section 34(IX) of the State Constitution which prohibit the adoption of a special law where a general law may be made applicable. However, as stated in Shillito v. City of Spartanburg, 214 S.C. 11, 20, 51 S.E.2d 95, 98 (1948),

The language of the Constitution which prohibits a special law where a general law can be made applicable, plainly implies that there are or may be cases where a special act will best meet the exigencies of a particular case, and in no wise be promotive of those evils which result from a general and indiscriminate resort to local and special legislation. There must, however, be a substantial distinction having reference to the subject matter of the...legislation, between the objects or places embraced in such legislation and the objects and places excluded. The marks of distinction upon which the classification is founded must be such, in the nature of things, as will in some reasonable degree, at least, account for or justify the restriction of the legislation.

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In Medical Society of South Carolina v. Medical University of South Carolina, 334 S.C. 270, 279, 513 S.E.2d 352, 358 (1999) it was stated that

The General Assembly must have a logical basis and sound reason for resorting to special legislation...[and the Supreme Court]...will not overrule the legislature's judgment that a special law is necessary unless there has been a clear and palpable abuse of legislative discretion.

As stated in a prior opinion of this office dated July 31, 2003 also dealing with the question of constitutionality pursuant to Article III, Section 34,

...one key consideration as to whether an act is unconstitutional under Article III, Section 34 is whether there are any peculiar local circumstances which would justify special treatment for the local area in question.

Generally, there is a strong presumption of constitutionality that attaches to any legislation enacted by the General Assembly. University of South Carolina v. Mehlman, 245 S.C. 180, 139 S.E.2d 771 (1964). 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 of the General Assembly unconstitutional.

While Act No. 1135 contains no legislative findings, there may be "marks of distinction" regarding the two schools provided for in the legislation which require a special set of laws to authorize increased police jurisdiction. Of course, ascertainment of any such facts would be outside the scope of an opinion of this office. Because these "marks of distinction" may well have been taken into account by the General Assembly in enacting such legislation, I am of the opinion that the presumption of constitutionality should prevail in this instance.

However, if there is any doubts as to proceeding pursuant to the referenced legislation, consideration could be given to the provisions of S.C. Code Ann. § 5-7-110 which states:

Any municipality may appoint or elect as many police officers, regular or special, as may be necessary for the proper law enforcement in such municipality and fix their salaries and prescribe their duties. Police officers shall be vested with all the powers and duties conferred by law upon constables, in addition to the special duties imposed upon them by the municipality. Any such police officers shall exercise their powers on all private and public property within the corporate limits of the municipality and on all property owned or controlled by the municipality wheresoever situated; provided, that the municipality may contract with any public utility, agency or with any private business to provide police protection beyond the corporate limits. Should the municipality provide police protection beyond its corporate limits by contract, the legal description of the area to be served shall be

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filed with the State Law Enforcement Division, the office of the county sheriff and the Department of Public Safety. (emphasis added).

Therefore, there may be expanded police protection outside the corporate limits of a municipality pursuant to a contract with a public agency. I am enclosing a copy of a prior opinion of this office dated May 28, 2002 which concluded that a school district could be considered a public agency for purposes of such provision. You may wish to consider such statute with regard to the possibility of providing police protection outside the municipal limits.

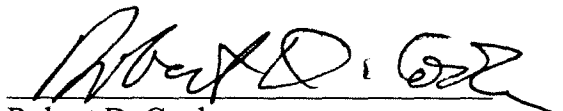
With kind regards, I am,

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General