November 27, 2007

The Honorable Mike Fair
Member, South Carolina Senate
Post Office Box 14632
Greenville, South Carolina 29610

Dear Senator Fair:

We received your letter requesting an opinion of this Office concerning the enabling legislation establishing the Greenville Hospital Board of Trustees. In your letter, you state: "We are considering an amendment to the Act." Therefore, you ask: "Does an amendment to an existing statute violate the Constitutional proscription on 'one county' legislation?"

Law/Analysis

The Legislature established the Greenville General Hospital Board of Trustees via act 432 of 1947. 1947 S.C. Acts 1145. The 1947 act set forth the numerous powers and duties afforded to the this board. In 1966, the Legislature amended this legislation changing the name of the Greenville General Hospital Board of Trustees to the Greenville Hospital System Board of Trustees (the "Board"). 1966 S.C. Acts 3247.

We understand from your letter, that the General Assembly is considering amending the Board's enabling legislation, but is concerned that such action may violate the South Carolina Constitution's prohibition on special legislation. Article VIII, section 7 of the South Carolina Constitution (1976) was enacted as part of the Home Rule amendments to the South Carolina Constitution. This provision prohibits the General Assembly from enacting laws for a specific county or municipality and states as follows:

> The General Assembly shall provide by general law for the structure, organization, powers, duties, functions, and the responsibilities of counties, including the power to tax different areas at different rates of taxation related to the nature and level of governmental services provided. Alternate forms of government, not to exceed five, shall be established. <u>No laws for a specific county shall be enacted and no county shall be exempted from the general laws or laws applicable to the selected alternative form of government.</u>

S.C. Const. art. VIII, § 7 (emphasis added).

In Cooper River Park and Playground Commission v. City of North Charleston, 273 S.C. 639, 259 S.E.2d 107 (1979), our Supreme Court addressed whether legislation purported to change the territorial jurisdiction of the Cooper River Park and Playground Commission violated article VIII, section 7. The Court noted that the Legislature enacted the legislation subsequent on the Home Rule amendments to the Constitution. The Court clarified "Section 7 is not only applicable to special legislation creating a district, but also to special legislation dealing with districts created prior to the ratification of new Article VIII or the amendment of prior special legislation." Id. at 642, 259 S.E.2d at 108-09. Accordingly, the Court found the legislation in question to be special legislation, and thus, in violation of the provisions contained in section 7. Id. at 642, 259 S.E.2d at 109.

In Hamm v. Cromer, 305 S.C. 305, 408 S.E.2d 227 (1991), the Court addressed the similar issue of whether the Legislature's change in the appointment method of members of a county water and sewer authority is prohibited under the Constitution. The Court looked not only to section 7 of article VIII, but also to section 1 of article VIII, which provides: "The powers possessed by all counties, cities, towns, and other political subdivisions at the effective date of this Constitution shall continue until changed in a manner provided by law." S.C. Const. art. VIII, § 1 (1976). Interpreting this provision along with section 7, the Court stated: "these sections meant that existing political subdivisions should continue to function as authorized by law on March 7, 1973, when Article VIII was ratified, until the General Assembly acted to fulfill Section 7." Id. at307, 408 S.E.2d at 228. The Court continued:

> In Kleckley v. Pulliam, 265 S.C. 177, 217 S.E.2d 217 (1975) this Court held that the prohibition against special legislation contained in Article VIII, meant that no law could be passed concerning a specific county which related to those powers, duties, functions, and responsibilities, which under the mandated systems of government, were set aside for counties. See also, Richardson v. McCutchen, 278 S.C. 117, 292 S.E.2d 787 (1982). The prohibition of Section 7 is applicable to special legislation dealing with districts created prior to the ratification of Article VIII or the amendment of prior special legislation. Id.

Id. at 307-08, 408 S.E.2d at 228-29. Finding the Legislature enacted the legislation subsequent to March 7, 1973, the Court concluded it is special legislation prohibited under sections 1 and 7 of article VIII of the South Carolina Constitution. Id. at 308, 408 S.E.2d at 229. See also Pickens County v. Pickens County Water and Sewer Auth., 312 S.C. 218, 439 S.E.2d 840 (1994) (reaching a similar conclusion with regard to legislation creating a water and sewer authority after the enactment of Home Rule).

The General Assembly enacted act 432 of 1947, creating the Greenville Hospital Board of Trustees, prior to the enactment of the Home Rule amendments to the South Carolina Constitution. Thus, following the cases discussed above, if the Legislature now sought to amend its provisions, such amendments likely would constitute special legislation in violation of sections 1 and 7 of article VIII. However, we must point out that legislation passed by the General Assembly is presumed constitutional. Horry County School Dist. v. Horry County, 346 S.C. 621, 631, 552 S.E.2d 737, 742 (2001) ("All statutes are presumed constitutional and will, if possible, be construed so as to render them valid."). "A legislative enactment will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates a provision of the constitution." Joytime Distrib. & Amusement Co., Inc. v. State, 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999). Moreover, "[w]hile 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." Op. S.C. Atty. Gen., August 19, 1997. Accordingly, while we believe a legislative enactment amending act 432 of 1947 would be constitutionally suspect as special legislation, such an amendment is presumed constitutional and will remain in force unless and until a court rules otherwise.

Very truly yours,

Henry McMaster
Attorney General

By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook
Assistant Deputy Attorney General