



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

March 25, 1997

The Honorable Eugene C. Stoddard
Member, House of Representatives
422B Blatt Building
Columbia, SC 29211

Dear Representative Stoddard:

You have requested the advice of this Office as to the constitutionality of Senate Bill 402 (S402). The bill provides that, if the number of qualified candidates offering for election is equal to the number of vacancies, then the "...candidates must be deemed elected without an election being held."

If this bill became law, a Court reviewing it could not declare it unconstitutional "unless its repugnance to the Constitution is clear and beyond a reasonable doubt." Robinson v. Richland County Council, 293 S.C. 27 358 S.E. 2d 392 (1987). Although 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.

Nevertheless, despite the application of the above standards, the above provision appears to be of doubtful constitutionality. Two questions are pertinent to the consideration of the Acts's constitutionality: whether the School Boards in Laurens County have taxing authority and, if so, whether the above quoted provision of S402 violates constitutional provisions on taxation without representation. See Ops. Atty. Gen. (No. 87-25, March 23, 1987).

Crow v. McAlpine, 277 S.C. 240, 285 S.E.2d 355 (1981) held that S.C. Const. art X §5 prohibiting taxation without the consent of the people or their representatives was violated by delegating taxing authority to a body composed of persons "...not assented to by the people nor subject to the supervisory control of a body chosen by the people...." The legislation giving the Laurens County Board's taxing authority is written in terms of approving the budget and recommending a levy up to a 2 mill increase without a referendum which appears to constitute a power to tax, at least

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for the purposes of Crow. Act No. 241, 1996 SC Acts ___; see Aiken County Board of Education v. Knotts, 274 S.C. 44, 262 S.E. 2d 14 (1980). Although the recommendation is made to the auditor, no authority is indicated for the auditor or other official to reject such a recommendation when the recommended levy is necessary to fund the budget and when the levy is within the Act's limitations on increases without a referendum.

The question then becomes whether the above quoted provision of S402 would violate the taxation without representation provisions of art. X § 5 by providing that no election will be held if the number of candidates equal the number of offices. The effect of this provision would be to deny the opportunity for write-in candidates and an actual vote on all candidates, nominated and write-in. The Courts of this State have ruled that write-ins must be counted in an election since "the purpose of an election is to express the will of the electorate." Ops. Atty. Gen. (No. 87-25, March 23, 1987); Redfearn v. South Carolina Board of Canvassers, 234 S.C. 113, 120, 107 S.E. 2d 10 (1959). Accordingly, the effect of the quoted part of S402 would be to deny this opportunity for an election when the number of candidates and vacancies were the same.

In conclusion, because the Laurens County school boards appear to have unsupervised taxing authority up to a two mill increase, S402 might violate art. X § 5 as to those boards if an election were not held when the number of candidates equal the number of vacancies. Of course, if S402 passes, only a Court could declare it unconstitutional.

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

If you have other questions, please let me know.

Yours very truly,

J. Emory Smith, Jr.

Assistant Deputy Attorney General

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