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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

May 5, 1997

The Honorable Edith Martin Rodgers
Member, House of Representatives
304D Blatt Building
Columbia, South Carolina 29211

RE: Informal Opinion

Dear Representative Rodgers:

Attorney General Condon has forwarded your opinion request to me for reply. You ask whether a bill which devolves the authority for appointments and budgetary approvals for certain offices, boards, and commissions from the joint legislative delegation representing Beaufort County to the governing body of Beaufort County (hereinafter "the Bill") is constitutional.

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.

The Bill would devolve the authority for appointments and budgetary approvals for certain offices, boards, and commissions, from the joint legislative delegation of Beaufort County to the governing body of Beaufort County. Such appointment authority and subsequent budgetary approval to be transferred, upon the acceptance of Beaufort County Council, would include the positions or offices of Veterans Affairs, County Department of Social Services, Transportation Committee, Department of Disabilities and Special

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Needs, Foster Care Review Board, Beaufort/Jasper Water and Sewer Authority, Beaufort County Board of Elections and Registration, Coastal Zone Management Commission Appellate Panel, and the Mental Health Center Board. The Bill is clearly one which would only affect Beaufort County.

An analysis of the Bill 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 the Bill 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 the Bill 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 the Bill is not general in form. While a number of statutes relative to the affected appointments are listed in the body of the Bill, the Bill itself does not amend these statutes to create an exception for Beaufort 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 the Bill 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 the Bill.

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Furthermore, the Bill does not contain legislative findings to explain why Beaufort County requires special treatment or what peculiar circumstances may exist in Beaufort County that would justify special legislation. It is further observed that several acts similar to the Bill 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 the Bill 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