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The State of South Carolina

Office of the Attorney General

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June 16, 1993

Mark R. Elam, Esquire
Senior Legal Counsel to the Governor
Office of the Governor
Post Office Box 11369
Columbia, South Carolina 29211

Dear Mr. Elam:

By your letter of June 10, 1993, you have asked for the opinion of this Office as to the constitutionality of H.4218, R-269, an act establishing the Board of Election and Registration for Union County.

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 (1937); 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.

It might be argued that this act violates provisions of Article III, Section 34 (IX) of the State Constitution. For the reasons following, however, we believe that the presumption of constitutionality would be upheld if constitutionality of the act were challenged under this provision.

Article III, Section 34(IX) prohibits the adoption of a special law where a general law may be made applicable. As stated in Shillito v. City of Spartanburg, 214 S.C. 11, 51 S.E.2d 95 (1948), however,

> The language of the Constitution which prohibits a special law where a general law can be made applicable,

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> 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 proposed 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.

214 S.C. at 20.

While the act in question contains no legislative findings, there may well be distinctions which would merit a special act. Because these distinctions may well have been taken into account by the General Assembly in adoption of this act, this Office is of the opinion that the presumption of constitutionality should prevail in this instance. Ascertainment of these facts would be outside the scope of an opinion of this Office. Op. Atty. Gen. dated December 12, 1983.

For these reasons, this Office believes the act in question could very likely pass constitutional muster if challenged in court. Of course, unless and until a court declares otherwise, this act, like any other legislative enactment, is entitled to the presumption of constitutionality.

With kind regards, I am

Very truly yours,

Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:

Robert D. Cook
Executive Assistant for Opinions