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The State of South Carolina



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June 16, 1993

Mark R. Elam, Esquire
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Office of the Governor
Post Office Box 11369
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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.3562, R-220, an act creating a Registration and Elections Commission for Bamberg County and providing for the filling of any vacancy on an Orangeburg County school district board. For the reasons following, it is the opinion of this Office that the Act is of doubtful constitutionality.

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.

Deputy Letter

Mr. Elam
Page 2
June 16, 1993

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, 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.

As to any question regarding the constitutionality of the provision regarding filling any vacancy on an Orangeburg County school district board, for the reasons expressed in the opinions from Emory Smith to you dated this same day construing the decision in Moseley v. Welch, 209 S.C. 19, 39 S.E.2d 133 (1946), a court would probably uphold R-220. However, as stated in those opinions, the decision in Horry County v. Horry County Higher Education Commission, _____ S.C. _____, 412 S.E.2d 421 (1991) indicates there is some risk that R-220 could be found unconstitutional "if a court were to conclude that a general law could be fashioned on its subject and that no peculiar local conditions required special treatment."

Mr. Elam
Page 3
June 16, 1993

However, R-220 could face a challenge pursuant to Article III, Section 17 of the State Constitution which provides:

Every Act or resolution having the force of law shall relate to but one subject, and that shall be expressed in the title.

The requirement to be met is that the legislation "relate to but one subject, with the topics in the body of the act being kindred in nature and having a legitimate and natural association with the subject of the title." Maner v. Maner, 278 S.C. 377, 296 S.E.2d 534 (1982). While the Court in Maner held that such provision should be liberally construed, "it should not be so liberally construed as to extend it 'to such a point as to foster the abuses which its provisions are designed to prevent.'" 278 S.C. at 382. As noted, the legislation creates a Registration and Elections Commission for Bamberg County and provides for the filling of any vacancy on an Orangeburg County school district board. Therefore, we would advise that H.3562, R-220 would be of doubtful constitutionality. Of course, this Office possesses no authority to declare an act of the General Assembly invalid; only a court would have such authority.

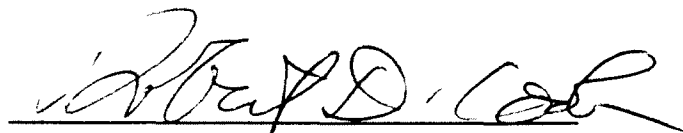
Sincerely,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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