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The State of South Carolina

Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3970
FACSIMILE: 803-253-6283

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.4219, R-238, an act relating to the Union County Department of Social Services. 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.

Generally, S.C. Code Section 43-3-10 provides for the establishment of a county board of social services "to be composed of not less than three nor more than nine members." A prior opinion of this Office dated January 27, 1988 determined that the statute is self-executing and therefore a county legislative delegation may increase the number of board members on a county board of social services without further legislative action.

The act bearing ratification number R-238 decreases the membership of the Union County Department of Social Services Board from nine to three members. Article III,

Personnel Letters

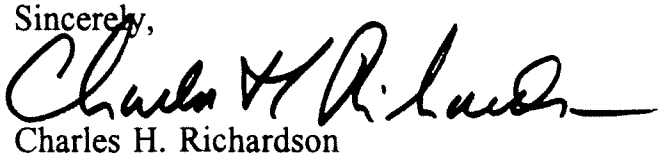
Section 34(IX) prohibits the adoption of a special law where a general law may be made applicable. As stated in Shillito v. City of Spartanburg, 214 S.C. 11, 51 S.E.2d 95 (1948), however,

> 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. The act contains no legislative findings which would distinguish the situation in Union County and it is questionable whether such could be found to exist in light of Section 43-3-10.

Based on the foregoing, we would advise that H.4219, R-238 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:

Robert D. Cook
Executive Assistant for Opinions