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The State of South Carolina

Office of the Attorney General

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April 20, 1994

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 April 15, 1994, you have asked for the opinion of this Office as to the constitutionality of H.4690, R-372, an act making specified changes in the governance of the Lexington County Recreation Commission. 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.

The act bearing ratification number 372 of 1994 makes specified changes in the number of terms a member may serve on the Lexington County Recreation Commission, the number of consecutive terms a member may serve, removal of members, and the like. The 1994 act amends, in part, Act No. 1201 of 1968, in which it is clear that the area encompassed by the Lexington County Recreation Commission is located wholly within Lexington County. See Op. Att'y Gen. dated February 5, 1990, a copy of which is enclosed. Thus, H.4690, R-372 of 1994 is clearly an act for a specific county. Article VIII, Section 7 of the Constitution of the State of South Carolina provides that "[n]o laws

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for a specific county shall be enacted." Acts similar to H.4690, R-372 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); Knight v. Salisbury, 262 S.C. 565, 206 S.E.2d 875 (1974); Hamm v. Cromer, 305 S.C. 305, 408 S.E.2d 227 (1991); Pickens County v. Pickens County Water and Sewer Authority, Op. No. 23981 filed in the Supreme Court January 10, 1994.

Based on the foregoing, we would advise that H.4690, R-372 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,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosure

REVIEWED AND APPROVED BY:

Robert D. Cook
Executive Assistant for Opinions