5355 Library

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

February 17, 1994

The Honorable Thomas L. Moore
Senator, District No. 25
211 Gressette Building
Columbia, South Carolina 29202

Dear Senator Moore:

By your letter of February 10, 1994, you have asked for the opinion of this Office as to the constitutionality of H.4452, a bill which provides that the Beech Island Water District in Aiken County may continue to serve the areas it served as of January 1, 1993. For the reasons following, it is our opinion that the bill is most probably unconstitutional.

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.

House bill 4452 provides as follows:

> Notwithstanding the provisions of Act 476 of 1969, as amended, relating to the creation of the Valley Public Service Authority, the Beech Island Water District in Aiken County may continue to serve the areas it served as of January 1, 1993.

Request Letter

It is uncontroverted that the areas comprising the service areas of both Valley Public Service Authority and Beech Island Water District are wholly within Aiken County. Thus, H.4452 is clearly an act for a specific county, Aiken to be specific.

Article VIII, § 7 of the Constitution of the State of South Carolina provides that "[n]o laws for a specific county shall be enacted." Acts similar to H.4452 have been found to be violative of Article VIII, § 7 in decisions such as Pickens County v. Pickens County Water and Sewer Authority, Op. No. 23981, filed January 10, 1994 in the Supreme Court (act relating to Pickens County Water and Sewer Authority invalidated); Hamm v. Cromer, 305 S.C. 305, 408 S.E.2d 227 (1991) (invalidated an act relating to Newberry County Water and Sewer Authority); 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). As the court stated in Hamm v. Cromer, the enactment of a local law for a special purpose district after March 7, 1973 (the date on which Article VIII was ratified and thus became effective) "is exactly the type of special legislation which is prohibited by Sections 1 and 7 of Article VIII of the South Carolina Constitution as it was not intended that after the ratification of the constitutional amendment, the General Assembly could repeatedly inject itself into local affairs." 305 S.C. at 308.

Based on the foregoing, we are of the opinion that if H.4452 were adopted by the General Assembly and then challenged in a judicial proceeding, H.4452 would be found to be violative of Article VIII, § 7 of the State Constitution.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions