5337 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. 29211-1549
TELEPHONE: 803-734-3636
FACSIMILE: 803-253-6283

March 2, 1994

The Honorable W. Greg Ryberg
Senator, District 24
Post Office Box 142
Columbia, SC

Dear Senator Ryberg:

You have requested the opinion of this Office as to the constitutionality of proposed House Bill 3083 under the special legislation restrictions of S.C. Const. art. III, § 34. Section A of this bill prohibits Lexington County School District One from undertaking construction or renovation projects financed by means of lease-purchase or lease-lease back agreements. Section B of the bill also defines such agreements entered prior to the effective date of that law as constituting "general obligation debt for the period of the lease."

In considering the constitutionality of an act of the General Assembly, the presumption is that the act is constitutional in all respects. A court will not declare such an act void unless its unconstitutionality is clear beyond any reasonable doubt. Robinson v. Richland County Council, 293 S.C. 27, 358 S.E.2d 392 (1987). All doubts of constitutionality are generally resolved in favor of constitutionality. While this Office may comment upon potential constitutional problems, to declare an act unconstitutional is solely within the province of the courts of this State. Despite this presumption, H.3083 contains some risk of being declared unconstitutional.

Under art. III, § 34, the South Carolina Supreme Court declared a local education law unconstitutional in Horry County v. Horry County Higher Education Commission, 306 S.C. 416, 412 S.E.2d 421 (1991). In Horry County, the Supreme Court recognized the broad legislative power of the General Assembly in dealing with education under art. XI of the Constitution, but the court made clear that education is not exempt from special legislation restrictions of the Constitution. The court struck down legislation for the Horry County Higher Education Commission under art. III § 34 because it found that a general law could be fashioned to provide ad valorem property tax funding for all colleges and universities and that the record was "...devoid of any peculiar local conditions which require special treatment for Coastal Carolina" as to those taxes.

Although Horry County demonstrates that local education laws are subject to review under art. III, § 34, Moseley v. Welch, 209 S.C. 19, 39 S.E.2d 133, 138 (1946), recognized considerations that may allow at least section A to avoid unconstitutionality under art. III § 34. The court stated that "[i]t is exceedingly doubtful whether a general law, uniform in operation throughout the state, regulating the measure of aid to be given by the counties to the districts or the extent of control which should be vested in the county boards of education, could be made applicable." Moreover, Moseley quoted the special referee in that case who held that the numerous special legislation provisions for the fiscal affairs of the schools and the counties of this State was "...at least indicative of a consistent legislative opinion that conditions in the various counties are such as to preclude uniformity of treatment in relation to the administration of school affairs." Id. According to the court, that conclusion of the General Assembly was "entitled to much respect and in doubtful cases should be followed." Id.

A court could uphold section A of H.3083 on the basis of the above presumption of constitutionality and the language quoted from Moseley (See also Horry County, and Gillespie v. Pickens County, 197 S.C. 217, 14 S.E.2d 900 (1941)); however, a risk exists that a court could find section A to be unconstitutional under art. III, § 34, as a special law where a general law could be made applicable. At least one general law has already been found to apply to lease purchases, S.C. Code Ann. § 59-19-125 (Supp. 1993), and certain general laws do exist as to borrowing for capital improvements at schools (see e.g. S.C. Const. art. X § 15, S.C. Code Ann., § 11-27-50 (1986) and § 59-71-10, et seq. (1990)). In Whiteside v. Cherokee County School District, ___ S.C. ___, 428 S.E.2d 886 (1993), the Court found that general provisions for approval of leases in § 59-19-125 applied to lease purchases.

Although you have not raised the question of whether the general obligation debt provisions of section B of this bill are constitutional under art. X, § 15, of the Constitution concerning bonded indebtedness of school districts, these provisions need to be addressed as they might relate to a review of the bill under art. III, § 34. Art. X, § 15, defines general obligation debt as meaning "...any indebtedness of the school district which shall be secured in whole or in part by a pledge of its full faith, credit and taxing power." The South Carolina Supreme Court has previously held that lease/purchase agreements do not constitute debt under this provision. Caddell v. Lexington County School District No. 1, 296 S.C. 397, 373 S.E.2d 598 (1988). Therefore, section B of H.3083 appears to be attempting to change the meaning of art. X, § 15, as it applies to debt in Lexington County School District One. This constitutional provision does not appear to contain authorization for the legislature to change, by statute, the

meaning of the definition of general obligation debt. Accordingly, section B of H.3083 carries some risk of being found to be unconstitutional under art. X, § 15. In Caddell, the Supreme Court indicated that "legislative proscription" could address the lease/purchase issue. Section A appears to be a "proscription" but section B is instead a changing of the definition of debt under art. X, § 15.

Because of the possible problem of constitutionality under art. X, § 15, a risk exists that a court might find section B of H.3083 unconstitutional under art. III, § 34, or art. X, § 15. The Court could conclude that H.3083 is not appropriate special legislation because it may contravene the statutory definition of general obligation debt in art. X, § 15. Section B also addresses borrowing as special legislation when general laws exist on that subject. See supra.

The conclusion of this Office is that the prohibitions of section A of H.3083 might be upheld under art. III, § 34 but do carry some risk of being found unconstitutional under that constitutional provision. Section B carries a substantial risk of being declared unconstitutional under art. III, § 34, or art. X, § 15.

This opinion is not intended to express any opinion as to the wisdom of legislating concerning the topic of lease/purchase arrangements. Such matters are for the General Assembly to determine. As noted in Caddell, concerns about lease/purchase arrangements may be addressed by "constitutional amendment or legislative proscription." Instead, the conclusion of this opinion is merely that certain provisions of H.3083 may not be found by a court to be a constitutional means of addressing the subject of lease/purchase arrangements.

If you have any questions, or if this Office may be of other assistance to you, please let us know.

Yours very truly,

J. Emory Smith, Jr.
Deputy Attorney General

JESjr:ppw

REVIEWED AND APPROVED BY:

JAMES PATRICK HUDSON
Chief Deputy Attorney General

ROBERT D. COOK
Executive Assistant for Opinions