

CHARLES MOLONY CONDON  
ATTORNEY GENERAL



Reg. 4851

The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211-1549  
TELEPHONE: 803-734-3970  
FACSIMILE: 803-253-6263

March 15, 1995

The Honorable Lewis R. Vaughn  
Member, House of Representatives  
534 Blatt Building  
Columbia, South Carolina 29211

RE: Informal Opinion

Dear Representative Vaughn:

By your letter of March 6, 1995, to Attorney General Condon, you have sought an opinion as to the constitutionality of S.494, a bill concerning solid waste landfills in Spartanburg County. You have questioned whether this is special legislation which would violate Article VIII, Section 7 of the South Carolina Constitution.

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 bill in question contains the following provisions:

Notwithstanding any other provision of law, no commercial construction, demolition, and land-clearing landfill in Spartanburg County may be located within three thousand feet of an existing aquaculture farm or facility. This section does not apply to existing permitted commercial construction, demolition, and land-clearing debris landfills. For purposes of

The Honorable Lewis R. Vaughn  
Page 2  
March 15, 1995

this section, "commercial landfill" means a landfill providing landfill services to other persons or entities for compensation.

An analysis of this bill clearly indicates that the bill is one which would affect only Spartanburg County.

As you observe in your request, Article VIII, Section 7 of the South Carolina Constitution provides in relevant part that "[n]o laws for a specific county shall be enacted..." Enactments by the General Assembly similar to the instant bill 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); Hamm v. Cromer, 305 S.C. 305, 408 S.E.2d 227 (1991); Pickens County v. Pickens County Water and Sewer Authority, \_\_\_ S.C. \_\_\_, 439 S.E.2d 840 (1994). I am of the opinion that the instant bill would be of doubtful constitutionality, based on the reasoning and precedent of these and other similar cases, though of course the presumption of constitutionality would attach and only a court could declare the enactment invalid.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion. I trust that the foregoing is satisfactorily responsive to your inquiry.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General