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April 26, 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 April 21, 1993, you have asked for the opinion of this Office as to the constitutionality of S.295, R-46, an act relating to the Cherokee Springs Fire District in Spartanburg County. 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 46 of 1993 would authorize the Board of Fire Control of the Cherokee Springs Fire District of Spartanburg County to borrow a maximum of one million dollars, in anticipation of taxes, upon terms and for a period as the board deems most beneficial, raising the previous limit of two hundred thousand dollars and to prohibit increases in ad valorem taxes (as a result of the increase in authorized indebtedness) in excess of the currently authorized ten mills without a favorable referendum. This act appears to amend Act

No. 740 of 1990, which amended Act No. 318 of 1965. A review of the latter act shows that the District is located wholly within Spartanburg County. Thus, S.295, R-46 of 1993 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 for a specific county shall be enacted." Acts similar to S.295, R-46 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).

Another potential constitutional infirmity is noted, as well. In an opinion dated May 30, 1990 considering the constitutionality of the enactment that became Act No. 740 of 1990, we stated:

> A review of Act No. 318 of 1965 reveals that the Cherokee Springs Fire District is apparently located wholly within Spartanburg County and further that it would be a special purpose district (i.e., political subdivision). Cf., Op. Atty. Gen. 84-132. Thus Article X, Section 14(8) of the State Constitution would govern the incurring of indebtedness of the District.

That opinion concluded that the 1990 act in question would be constitutionally suspect because the act was a special, not general, act and a court could conclude that the act was unconstitutional on its face as violative of Article X, Section 14(8) of the State Constitution. Depending on the period of time for which the tax anticipation notes should be issued, if the period of time should exceed the ninety-day limit expressed in Section 14(8), the act could be unconstitutional as applied. Concern was also expressed that Article VIII, Section 7 would be violated. A copy of the 1990 opinion is enclosed.

A review of S.295, R-46 reveals that it suffers from the same constitutional infirmities as expressed in the opinion of May 30, 1990, as it is an act for a specific county and it could be deemed violative of Article X, Section 14(8) on its face or as applied, or both, since the Board of Fire Control would be given the power to issue tax anticipation notes "on terms and for a period as to the fire control board may seem most beneficial...."

Based on the foregoing, we would advise that S.295, R-46 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/kws
Enclosure

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions