

The State of South Carolina



Office of the Attorney General

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March 9, 1993

Mark R. Elam, Esquire
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Office of the Governor
Post Office Box 11369
Columbia, South Carolina 29211

Dear Mr. Elam:

By your letter of March 3, 1993, you have asked for the opinion of this Office as to the constitutionality of S.239, R-11, an act changing the composition of the Walterboro-Colleton County Airport 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 11 of 1993 amends § 2-281 of the 1962 Code of Laws as to the governing body of the Walterboro-Colleton County Airport Commission, deleting the Supervisor of Colleton County (which office has been abolished) as a member and substituting the chairman of Colleton County Council, and deleting the reference to the chairman of the Finance Committee of the Town of Walterboro and replacing that member with a member of Walterboro City Council to be selected by the council. An examination of Act No. 584 of 1946 and amendatory acts reveals that the Commission is an agency existing in Colleton County. Thus, S.239, R-11 of 1993 is clearly an act for a

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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.239, R-11 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). (Similarly, Article VIII, Section 10 prohibits the General Assembly's adoption of an act for a specific municipality.)

Based on the foregoing, we would advise that S.239, R-11 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

REVIEWED AND APPROVED BY:



Robert D. Cook
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