

The State of South Carolina



Office of the Attorney General

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May 25, 1993

C. Jo Anne Wessinger, Esquire
Labor, Commerce and Industry Committee
House of Representatives
407 Blatt Building
Columbia, South Carolina 29211

Dear Ms. Wessinger:

In a letter received yesterday you requested an opinion of this Office as to the constitutionality of an amendment to S.540 which contains a provision which states

... (if) ... regulations are disapproved by the General Assembly, the provisions of this act are null and void, and for this purpose the provisions of this section and the provisions of the other sections of this act are declared to be nonseverable [sic]. In the event the provisions of this act become null and void pursuant to this section, all provisions of law amended by this act are reinstated and reenacted in the exact manner that they existed immediately prior to this act taking effect, provided that any new provisions of law added by this act shall be null and void.

You also questioned the impact the disapproval of the referenced regulations and subsequent repeal would have on other provisions. You particularly referenced Section 19 which in establishing the Omnibus Insurance Fraud and Reporting Immunity Act creates the "Insurance Fraud Division" within this Office to prosecute insurance fraud, investigate insurance fraud allegations and collect fines. Of course, any statements within this opinion should not be construed as commenting on the merits of this particular new division inasmuch as the establishment of such a division is within the discretion of the General Assembly.

While this Office cannot predict how a court facing the issue of constitutionality of the statute would resolve the issue, we would note that, generally, an act of the General Assembly is presumed to be constitutional in all respects. Such an act will not be

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considered void unless its unconstitutionality is clear beyond any reasonable doubt. Thomas v. Macklen, 186 S.C. 290, 195 S.E. 539 (1938); Casey v. Richland County Council, 282 S.C. 387, 320 S.E.2d 443 (1984). All doubts as to constitutionality are typically resolved in favor of constitutionality. Moreover, while this Office may comment upon constitutional problems, it is solely within the province of the courts of this State to declare a statute unconstitutional.

It is well-settled that pursuant to Art. I, § 8 of the State Constitution, the Legislature may not delegate its power to make laws. However, it is generally stated that

... while the legislature may not delegate its power to make a law, it may make a law to become operative on the happening of a certain contingency or future event ... Following the same general rule, a law may also be made to take effect conditionally, depending upon the action of ... (another body).

16 Am.Jur.2d Constitutional Law, Section 359 pp. 904-906. See also: Moffett v. Traxler, 247 S.C. 298, 147 S.E.2d 255 (1966). Similarly stated,

... (the) ... Legislature may provide that a given enactment shall become inoperative or cease to exist as law unless, within ... (the) designated period, ... (the) ... act required shall be performed by a person or body to be affected by it.

16 C.J.S. Constitutional Law, Section 166, p. 531. Here, the General Assembly, while providing for the promulgation of regulations by the Chief Insurance Commissioner, retained the ultimate discretion regarding the continued effectiveness of the legislation by retaining the authority to disapprove the regulations which would render the legislation null and void. Therefore it appears that the referenced amendment would probably not be construed as transferring any authority of the General Assembly. Such construction is supported by the decision of the Washington Supreme Court in Diversified Investment Partnership v. Department of Social and Health Services, 775 P.2d 947 at 952-953 (1989) where it was stated

Just as the legislative power to render judgment is not transferred when the operative effect of a statute is conditioned upon a future specified event, legislative power is not transferred when the continued operation of a statute is conditioned upon a future event. In the latter case, the Legislature has judged that a statute will no longer be expedient when a certain circumstance arises. ... Conditioning the

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continued operation of a statute upon the happening of a future specified event can be distinguished from delegating the power to repeal a statute. When the Legislature attempts to delegate the power to repeal a statute, the Legislature necessarily transfers its power to render judgment as to the continued expediency of the statute. However, when the Legislature conditions the continued operation of a statute upon the happening of a future event, the Legislature retains and exercises the power to render judgment as to the continued expediency of the statute; it does not transfer this power to those capable of bringing about the event.

Therefore, it appears that a court would probably uphold the constitutionality of the referenced amendment.

As to your question regarding the impact of the disapproval of the regulations and subsequent repeal on other provisions of the legislation, as stated, the amendment provides that if the regulations are disapproved, "the provisions of this act are null and void, and for this purpose the provisions of this section and the provisions of the other sections of this act are declared to be nonserverable [sic]." It further provides that at such time all provisions amended "... are reinstated and reenacted in the exact manner that they existed immediately prior to this act taking effect, provided that any new provisions of law added by this act shall be null and void." The impact of disapproval is thus clear and unambiguous. Beyond the clear and precise language stated above, we cannot make any additional comment.

With kindest regards, I am

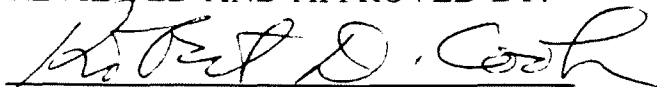
Very truly yours,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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