



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

August 26, 1998

Carmen M. Tevis, Staff Counsel
Labor, Commerce and Industry Committee
South Carolina House of Representatives
P.O. Box 11867
Columbia, South Carolina 29211

Re: Informal Opinion

Dear Ms. Tevis:

Attorney General Condon has forwarded your opinion request to me for reply. In 1996, the General Assembly passed Act No. 512 which devolved the authority for appointments and budgetary approvals for certain offices, boards, and commissions from the Joint Legislative Delegation representing Dorchester County to the governing body of Dorchester County. You have asked whether the General Assembly may enact a law which would transfer those powers devolved to the governing body of Dorchester County by Act No. 512 back to the Joint Legislative Delegation of Dorchester County.

In order to properly answer the question raised in your opinion request, the constitutionality of Act No. 512 must first be addressed. 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.

As previously stated, Act No. 512 devolved the authority for appointments and budgetary approvals for certain offices, boards, and commissions from the Joint Legislative Delegation of Dorchester County to the governing body of Dorchester County. This act is clearly one which affects only Dorchester County.

An analysis of Act No. 512 reveals constitutional concerns in at least two respects. The first is Article VIII, Section 7 of the South Carolina Constitution, which provides in relevant part that "[n]o laws for a specific county shall be enacted." Acts similar to Act No. 512 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, 312 S.C. 218, 439 S.E.2d 840 (1994). Thus, it would appear that Act No. 512 would be of doubtful constitutionality as violative of Article VIII, Section 7.

Another constitutional concern is Article III, Section 34, which provides that the General Assembly shall not enact local or special laws on certain subjects. That section continues:

IX. In all other cases, where a general law can be made applicable, no special law shall be enacted; Provided, That the General Assembly may enact local or special laws fixing the amount and manner of compensation to be paid to the County Officers of the several counties of the State, and may provide that the fees collected by any such officer, or officers, shall be paid into the treasury of the respective counties.

X. The General Assembly shall forthwith enact general laws concerning said subjects for said purposes, which shall be uniform in their operations: Provided, That nothing contained in this section shall prohibit the General Assembly from enacting special provisions in general laws.

It is observed that Act No. 512 is not general in form. While a number of statutes relative to the affected appointments are listed in the body of the act, the act itself does not amend these statutes to create an exception for Dorchester County (i.e., no special provisions in general laws have been created); the Code Commissioner is given some authority to modify code sections which are inconsistent with this act and to indicate in the notes following a code section that the county governing body has taken some action to accept appointment authority pursuant to this act.

Furthermore, Act No. 512 does not contain legislative findings to explain why Dorchester County requires special treatment or what peculiar circumstances may exist in Dorchester County that would justify special legislation. It is further observed that acts similar to Act No. 512 have been adopted relative to other counties in the State, which is some indication that other counties have similar circumstances which could perhaps be

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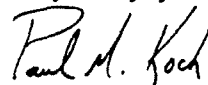
addressed by a law more general in operation. The courts of this State have opined, however, that the legislature has sound discretion to decide when a general law can be made applicable, so that the courts are reluctant to interfere with that legislative discretion and set aside a local statute unless that discretion has been clearly and palpably abused. Townsend v. Richland County, *supra*. While the question is not free from doubt, I have some concerns as to the constitutionality of Act No. 512 relative to Article III, Section 34.¹

If the General Assembly were to enact a law specific to Dorchester County which would amend Act No. 512, the law would be subject to the same legal analysis as conducted for Act No. 512. Such a law would likely suffer the same constitutional infirmities as mentioned above as it would be a special law for a specific county. However, since it is likely that Act No. 512 is of doubtful constitutionality, the question becomes whether unconstitutional special legislation may be repealed by unconstitutional special legislation. This Office has previously opined that "while the question is not entirely free from doubt, authorities seem to hold that the repeal of a special law by a special law would not violate special legislation prohibitions contained in State constitutions." Op. Atty. Gen. dated June 18, 1976. Therefore, based on the language contained in the June 18, 1976 opinion, it would appear that if the General Assembly enacted a law to repeal Act No. 512, such a law would not violate the special legislation prohibitions of the State Constitution. However, I caution that this question is not entirely free from doubt.

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.

With kindest regards, I remain

Very truly yours,



Paul M. Koch

Assistant Attorney General

¹ In opinions dated March 13, 1997 (Georgetown County) and May 5, 1997 (Beaufort County), this Office advised that legislation similar to Act No. 512 would be of doubtful constitutionality for all of the reasons mentioned herein.