

# The State of South Carolina



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September 27, 1991

Mark R. Elam, Esquire  
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Office of the Governor  
Post Office Box 11369  
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Dear Mr. Elam:

You have asked whether S.1026, R.255 is constitutional. Such legislation provides for the appointment of two special magistrates in Kershaw County and further states:

A special magistrate shall be available at night-time and on weekends during such hours as may be designated by the Kershaw County Council ... The special magistrates ... shall post surety bonds in the sum of two thousand dollars each with the Clerk of Court of Kershaw County ....

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.

Article V of the State Constitution vests the judicial power of this State in a unified judicial system. In Article V, Section 26, provision is made for the appointment of magistrates who are deemed to be a part of the unified judicial system. State ex rel. McLeod v. Crowe, 272 S.C. 41, 249 S.E.2d 772 (1978). Pursuant to Article V, Section 4, the Chief Justice is designated as the administrative

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head of the unified judicial system. In Douglas v. McLeod, 277 S.C. 76, 282 S.E.2d 604 (1981) the Supreme Court reiterated that inasmuch as the establishment of a uniform judiciary is mandated pursuant to Article V, statutes "... which extend or perpetuate a nonunified system or which operate so as to postpone or defeat the purpose of Article V must be deemed unconstitutional." 277 S.C. at 78. Also in Douglas, the Court referenced the provisions of Article VIII of the Constitution dealing with local government. Section 14 of such Article states

In enacting provisions required or authorized by this article, general law provisions applicable to the following matters shall not be set aside: ... (4) the structure for and the administration of the State's judicial system; ... (6) the structure and the administration of any governmental service or function, responsibility for which rests with the State government or which requires statewide uniformity.

In Douglas the Court stated that

Paragraph 14 (4 and 6) of Article VIII effectively withdraws administration of the State judicial system from the field of local concern.

277 S.C. at 80. Additionally, Article III, Section 34 (IX) of the Constitution prohibits the adoption of a special law where a general law may be applicable.

Section 22-2-40(B) of the Code in authorizing the position of ministerial magistrate, which is the equivalent of the position authorized by S.1026, states that

Ministerial magistrates shall be available at nighttime and on weekends during such hours as may be designated by the Chief Magistrate.  
(emphasis added)

The Order of the Chief Justice designating the Chief Judges for Administrative Purposes of Summary Courts dated June 20, 1991 specifically provides that the Chief Judge in each county shall

Designate the hours of operation of each magistrate's court office in the county, and designate the hours during which each magistrate shall be present in his or her office, based upon the number of hours fixed for each magistrate by the county governing body.

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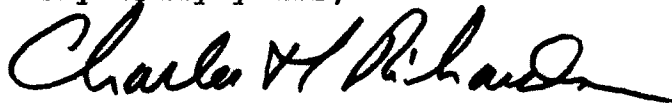
Pursuant to Section 22-1-150 of the Code a uniform manner for determining the amount of the bond required of magistrates is established. Generally a bond is set at not less than twenty-five percent of the collections of the magistrate for the previous year.

Referencing the above, it appears that the provisions of S.1026 relating to the designation by the County Council of specific hours of duty of the special magistrates and the establishment of the bond required of these magistrates could be construed as conflicting with the uniformity requirements of Article V inasmuch as such conflict with the general law provisions pertaining to magistrates referenced above. Additionally, the provision authorizing the designation by the County Council of the hours of availability of the special magistrates could be construed as being in conflict with Article VIII, Paragraph 14 which as referenced has been construed to withdraw administration of this State's judiciary, which would include the magistrate's court, from local concern. Also, as noted, general law provisions have been enacted dealing with the provisions of S.1026 referenced above. Again, Article III, Section 34 (IX) prohibits the adoption of a special law where a general law can be made applicable.

For the reasons set forth above, I am of the opinion that a court could conclude that S.1026 is violative of the State Constitution if a challenge was raised. Of course, unless and until a court declares otherwise, this act, like any other legislative enactment, is entitled to the presumption of constitutionality.

With kind regards, I am

Very truly yours,



Charles H. Richardson  
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:



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