

The State of South Carolina



Office of the Attorney General

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February 5, 1990

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

By your letter of February 1, 1990, you have asked for the opinion of this Office as to the constitutionality of H.4287, R-330, an act eliminating the restriction as to length of tenure of members of the Lexington County Recreation 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 330 of 1990 amends Act 1201 of 1968, as last amended by Act 617 of 1980 relative to the Lexington County Recreation Commission. The amendment removes the limitation formerly imposed on members of the Commission that they serve no more than two consecutive five-year terms. By the terms of section 2 of Act 1201 of 1968, it is clear that the area encompassed by this district is "the entire territory of Lexington County not embraced within the municipal limits of any incorporated city or town." Thus, H.4287, R-330 of 1990 is clearly an act for a specific county. Article VIII, Section 7

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of the Constitution of the State of South Carolina provides that "[n]o laws for a specific county shall be enacted." Acts similar to H.4287, R-330 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).

Based on the foregoing, we would advise that H.4287, R-330 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:

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