

The State of South Carolina

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Office of the Attorney General

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June 28, 1990

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

By your letter of June 22, 1990, you have asked for the opinion of this Office as to the constitutionality of H.4771, R-751, an act establishing certain boating regulations on Lakes Bowen and Blalock and providing a penalty for violations thereof. For the reasons following, it is our opinion that the presumption of constitutionality could be upheld in this instance.

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 751 of 1990 establishes certain boating restrictions on Lakes William C. Bowen and H. Taylor Blalock in Spartanburg County. It is our understanding that these lakes are the source of water for the Spartanburg Water System. The activities regulated on the lakes pursuant to H.4771, R-751 include the horsepower of motorboats, waterskiing, swimming, creating wake, and the like. Should the provisions of the act be violated, penalties would be imposed pursuant to Section 50-1-130 of the South Carolina Code of Laws (1989 Cum. Supp.). We note that similar statutes are in place, in Chapter 25 of Title 50 of the Code, for other specific bodies of water in this State.

It might be argued that this act violates provisions of Article III, Section 34 (IX) and Article VIII, Section 7 of the State Constitution. For the reasons following, however, we believe that the presumption of constitutionality would be upheld if constitutionality of the act were challenged under these two sections.

Article VIII, Section 7 prohibits the adoption of an act for a particular county by the General Assembly. Undeniably, the act in question relates solely to Spartanburg County. Adoption of an ordinance relative to operation of watercraft and the like is limited by Section 50-21-30 to the identical provisions contained in Chapter 21 of Title 50. If unique conditions exist on these two lakes which cannot be adequately addressed by an ordinance identical to state law, the appropriate political subdivision lacks authorization to go beyond state law to deal with the problem. Too, many of these matters are within the jurisdiction of the South Carolina Wildlife and Marine Resources Department, rather than a county, by virtue of Section 50-21-40.

Similarly, Article III, Section 34(IX) prohibits the adoption of a special law where a general law may be made applicable. As stated in Shillito v. City of Spartanburg, 214 S.C. 11, 51 S.E.2d 95 (1948), however,

The language of the Constitution which prohibits a special law where a general law can be made applicable, plainly implies that there are or may be cases where a special Act will best meet the exigencies of a particular case, and in no wise be promotive of those evils which result from a general and indiscriminate resort to local and special legislation. There must, however, be a substantial distinction having reference to the subject matter of the proposed legislation, between the objects or places embraced in such legislation and the objects and places excluded. The marks of distinction upon which the classification is founded must be such, in the nature of things, as will in some reasonable degree, at least, account for or justify the restriction of the legislation.

214 S.C. at 20. While the act in question contains no legislative findings, there may well be "marks of distinction" about these two lakes of the Spartanburg Water System which would require a special set of laws to control activities thereon. For example, waterskiing is regulated in part by Section 50-21-810 et seq.;

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the lakes in question may be of such unique characteristics that these general laws are not sufficient. Because these "marks of distinction" may well have been taken into account by the General Assembly in adoption of this act, this Office is of the opinion that the presumption of constitutionality should prevail in this instance. Ascertainment of these facts would be outside the scope of an opinion of this Office. Op. Atty. Gen. dated December 12, 1983.

For these reasons, this Office believes the act in question could very likely pass constitutional muster if challenged in court. Of course, unless and until a court declares otherwise, this act, like any other legislative enactment, is entitled to the presumption of constitutionality.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/an

Reviewed and Approved By:

*Robert D. Cook*

Robert D. Cook  
Executive Assistant for Opinions