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The State of South Carolina



Office of the Attorney General

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June 11, 1990

Mark R. Elam, Esquire
Senior Counsel to the Governor
Office of the Governor
Post Office Box 11369
Columbia, South Carolina 29211

Dear Mr. Elam:

By your letter of June 8, 1990, you have asked for the opinion of this Office as to the constitutionality of S.1620, R-694, an act amending Act No. 295 of 1989, relating to the Newberry County Park 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The act bearing ratification number 694 of 1990 amends Act No. 295 of 1989, which repealed Act No. 735 of 1936. The 1990 act devolves the powers, duties, and functions of the Newberry County Park Commission upon the governing body of Newberry County, transferring the Commission's assets and liabilities to the governing body of Newberry County, on the effective date of the repeal of Act No. 735 of 1936. In an opinion of this Office dated June 6, 1989, this Office noted that the Newberry County Park Commission is located only within Newberry County. Thus, S.1620, R-694 of 1990 is clearly an act for a specific county.

Mr. Elam
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Article VIII, Section 7 of the Constitution of the State of South Carolina provides that "[n]o laws for a specific county shall be enacted." Acts similar to S.1620, R-694 have been struck down by the South Carolina Supreme Court as violative of Article VIII, Section 7. See Cooper River Parks and Play-ground 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). See also Article III, Section 34 as to other potential constitutional difficulties presented by this act.

Based on the foregoing, we would advise that S.1620, R-694 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:

Robert D. Cook

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Executive Assistant for Opinions