

The State of South Carolina

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Office of the Attorney General

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June 8, 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 6, 1990, you have asked for the opinion of this Office as to the constitutionality of H.5133, R-684, an act pertaining to the Anderson County Fire Protection 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 684 of 1990 authorizes certain compensation for members of the Anderson County Fire Protection Commission, sets the millage to be levied on behalf of the Commission, further defines the service area, and so forth. A review of Act No. 294 of 1961, which created the fire district, as well as subsequent acts, shows that the fire district is located wholly within Anderson County. Thus, H.5133, R-684 of 1990 is clearly an act for a specific county. 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 H.5133, R-684 have been struck down by the South Carolina Supreme Court as

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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.5133, R-684
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/nnw

REVIEWED AND APPROVED BY:

Robert D. Cook

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Executive Assistant for Opinions