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The State of South Carolina



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June 4, 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 May 31, 1990, you have asked for the opinion of this Office as to the constitutionality of H.5085, R-648, an act amending Act No. 102 of 1973, to devolve the duties of the tax collector of McCormick County from the treasurer of McCormick County to a person selected by McCormick County Council with the consent of the treasurer. 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 648 of 1990, as described above, clearly relates only to McCormick County. Thus, H.5085, R-648 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.5085, R-648 have been struck down by the South

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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).

In addition, this act is a special act. Article III, Section 34 (IX) prohibits the adoption of a special law where a general law may be made applicable. By general law as expressed in section 3 of Act No. 283 of 1975 (the Home Rule Act), a county council has been authorized to amend or modify local legislation such as Act No. 102 of 1973. Thus, a court considering the issue could conclude that H. 5085, R-648 also violates Article III, Section 34 (IX).

Based on the foregoing, we would advise that H. 5085, R-648 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