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The State of South Carolina

Office of the Attorney General

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June 4, 1990

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

By your letter of May 29, 1990, you have asked for the opinion of this Office as to the constitutionality of H.3768, R-631, an act which regulates outdoor advertising signs. Your particular concern is whether newly-amended Sections 57-25-150(D) and (G) of the South Carolina Code of Laws would violate Article I, Section 13 of the State Constitution, which prohibits the taking of private property without just compensation.

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 631 of 1990 amends articles 1 and 3 of Chapter 25 of Title 57 of the Code, relative to outdoor advertising. Your inquiry concerns provisions of Section 57-25-150, which governs the issuance of permits for highway advertising signs (i.e., billboards). Subsection (D) provides:

> The Highways and Public Transportation Commission shall promulgate regulations governing

> the issuance of permits which must include mandatory maintenance to insure that all signs are always in a good state of repair. Signs not in a good state of repair are illegal.

Subsection (G) provides the following:

> Permits for the following signs are void:
> (1) conforming sign which is removed voluntarily for more than thirty days;
> (2) conforming sign which is removed, dismantled, or destroyed by an act of God or vandalism for more than sixty days;
> (3) nonconforming sign which is removed voluntarily or removed, dismantled, or destroyed by an act of God or vandalism.

As previously noted, these sections would be entitled to the presumption of constitutionality. These sections do not appear to be unconstitutional on their face. Whether these sections may be unconstitutional as applied in a given situation would require an inquiry into the facts and circumstances surrounding the given situation and could be undertaken only by a court. Subsection (D) might or might not be unconstitutional, based upon the regulations required to be promulgated thereunder; presumably such regulations would establish standards by which good or proper maintenance or repair might be judged. Until such regulations are promulgated and an attempt to enforce the statute is made, consideration of the constitutional question as applied may be premature.

As to subsection (G), we note that owners of billboards considered to be "conforming" apparently need only reapply and pay a permit fee to be able to re-establish their billboards. The act provides a means to challenge a determination by the highway department that a sign is illegal, through the Administrative Procedures Act and also provides for just compensation under certain circumstances, in Section 57-25-190. Thus, on the face of the statute, parts 1 and 2 of subsection (G) do not appear to be unconstitutional; if challenged in a particular instance, however, these parts of subsection (G) might be found to be unconstitutional as applied, depending on the facts and circumstances.

Part 3 of subsection (G) presents a closer question. In 3 Am.Jur.2d Advertising §25, it is stated: "The forced removal of nonconforming outdoor advertising displays is also a valid exercise of police power, and does not constitute the taking of property without compensation or give rise to constitutional cause for complaint." In situations in which the owner voluntarily gives up his his nonconforming use, or a partial destruction has occurred, or an

act of vandalism of which the owner is unaware has occurred, as examples, courts in other jurisdictions have suggested that it would be necessary to examine all facts and circumstances to determine whether a permit issued for a nonconforming use has been voided. Judicial decisions permitting and prohibiting the continued nonconforming use have been located in Annot., 80 A.L.R.3d 630; 7 McQuillin, Municipal Corporations, § 24.383; and 3 Am.Jur.2d Advertising §25. Thus, no conclusion can be expressed at this time as to whether this subsection may be unconstitutional as applied in a given instance.

For the foregoing reasons, it is the opinion of this Office that H.3768, R-631 of 1990 is most probably constitutional on its face; until and unless a court concludes otherwise, the act is entitled to the presumption of constitutionality. Whether the act can be applied in a constitutional manner in each and every hypothetical factual situation is, of course, dependent upon those facts and is outside the scope of an opinion of this Office.

With kindest regards, I am

Sincerely,

Patricia D. Petway

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Assistant Attorney General

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REVIEWED AND APPROVED BY:

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