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The State of South Carolina



Office of the Attorney General

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May 1, 1990

The Honorable Joe Wilson
Senator, District No. 23
Post Office Box 142
Gressette Senate Office Building
Suite 606
Columbia, South Carolina 29202

Dear Senator Wilson:

In a letter to this Office you asked whether it is constitutional to bar funeral directors from serving as coroners. You referenced a bill, H. 4676/S.1238, which sets forth several amendments to statutory provisions pertaining to the State Board of Funeral Service. Generally, pursuant to Sections 40-19-10 et seq. of the Code, an individual must be licensed by this State to act as an embalmer or funeral director. Section 6 of the proposed legislation states:

Section 40-19-190 of the 1976 Code is amended by adding at the end: (F) No licensed funeral director or embalmer may serve as coroner.

Section 7 of the bill states:

Any licensed funeral director or embalmer serving as coroner on the effective date of this act may continue to serve until the expiration of his term.

In considering the constitutionality of an act of the General Assembly, it is presumed that the act is constitutional in all respects. Upon enactment, the legislation 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);

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Townsend v. Richland County, 190 S.E. 270, 2 S.E.2d 777 (1939). All doubts are generally resolved in favor of constitutionality. While this Office may comment upon constitutional problems, it is solely within the province of the courts of this State to declare an act unconstitutional.

Article I, Section 5 of the State Constitution provides:

All elections shall be free and open, and every inhabitant of this State possessing the qualifications provided for in this Constitution shall have an equal right to elect officers and be elected to fill public office.

The Supreme Court has construed this provision to be applicable to offices created within the State Constitution in McLure v. McElroy, 211 S.C. 106, 44 S.E.2d 101 (1947). The Court concluded that

all officers, constitutional and statutory, and whether elected or appointed, must be qualified electors, and the legislature may not add other conditions for eligibility to those specified in the constitution for election or appointment to constitutional offices, that is, those offices created by the constitution; but as to offices established only by legislative acts, the General Assembly may prescribe other and additional qualifications which are reasonable in their requirements.

Id., 211 S.C. at 120. See also: State ex rel. Riley v. Martin, 274 S.C. 106, 262 S.E.2d 404 (1980)(as to offices which are "creatures of the Constitution,...the General Assembly may not add conditions to those specified in the Constitution... .")

Pursuant to Article V, Section 24 of the State Constitution

There shall be elected in each county by the electors thereof a clerk of the circuit court, a sheriff, and a coroner. ...All of these officers shall serve for terms of four years and until their successors are elected and qualify. The General Assembly shall provide by law for their duties and compensation... .(emphasis added)

No qualifications or conditions per se are established by such provisions for the constitutional office of coroner.

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While as stated only a court may declare legislation unconstitutional, there may be constitutional problems with Section 6 of the referenced legislation. The provision sets forth that "no licensed funeral director or embalmer may serve as coroner." Therefore, by restricting particular individuals' eligibility to serve as coroner, there may be a conflict with the provisions of Article I, Section 5 of the State Constitution.

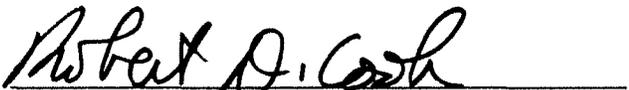
If there is anything further, please advise.

Sincerely,


Charles H. Richardson
Assistant Attorney General

CHR/nnw

REVIEWED AND APPROVED BY:


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