

The State of South Carolina



Office of the Attorney General

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February 22, 1991

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

Dear Mr. Elam:

By your letter of February 21, 1991, you have asked for the opinion of this Office as to the constitutionality of S.463, R-3, a joint resolution approving the dissolution of the Beaufort County Recreation District in Beaufort County. For the reasons following, it is the opinion of this Office that the joint resolution 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 joint resolution in question dissolves the Beaufort County Recreation District of Beaufort County and transfers the functions and assets of the District to a department of Beaufort County government. Such is required by S.C. Code Ann. § 4-9-80 following a successful referendum, which was held in November 1990. The Recreation District is located wholly within Beaufort County. Thus, S.463, R-3 of 1991 is clearly a joint resolution for a specific county. Article VIII, Section 7 of the Constitution of the State of South Carolina provides that "[n]o laws for

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a specific county shall be enacted." Acts similar to S.463, R-3 have been struck down by the South 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). See also Spartanburg Sanitary Sewer District v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984) (Part II of the opinion).

Based on the foregoing, we would advise that S.463, R-3 would be of doubtful constitutionality. Of course, this Office possesses no authority to declare an act or joint resolution 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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