

The State of South Carolina



Office of the Attorney General

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June 10, 1991

Mark R. Elam, Esquire
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Office of the Governor
Post Office Box 11369
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Dear Mr. Elam:

By your letter of June 7, 1991, you have asked for the opinion of this Office as to the constitutionality of H.3514, R-213, an act amending S.C. Code Ann. § 50-11-870 (1990 Cum. Supp.) to revise the specified portion of York County previously declared to be a bird sanctuary. 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 213 of 1991 amends § 50-11-870 to revise the specified area of York County previously declared to be a bird sanctuary, thus outlawing the use of shotguns, rifles, pellet guns, and BB guns within the area. The specified area is located wholly within York County. Thus, H.3514, R-213 of 1991 is clearly an act for a specific county.

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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.3514, R-213 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).

In addition, Article III, Section 34 of the Constitution provides that

[t]he General Assembly of this State shall not enact local or special laws concerning any of the following subjects or for any of the following purposes, to wit:

....

VI. To provide for the protection of game.

....

Provided, That the General Assembly is empowered to divide the State into as many zones as may appear practicable, and to enact legislation as may appear proper for the protection of game in the several zones.

....

The subject act is clearly a special or local act in that it relates to protection of birds in one area of York County. Because the act is not for the protection of game in the entire zone of which this area would be a part, see Section 50-1-60 (4) of the South Carolina Code of Laws, Article III, Section 34 is likely contravened by this act. See Ops. Atty. Gen. dated June 8, 1983; June 20, 1983; June 18, 1984; June 3, 1988; February 15, 1989; May 30, 1990; April 5, 1991.

While we applaud the efforts being made to protect the birds and wildlife in this State and in York County in particular, we must nevertheless advise that H.3514, R-213 would be of doubtful constitutionality. Of course, this Office possesses no

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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/an

REVIEWED AND APPROVED BY:

Robert D. Cook

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Executive Assistant for Opinions