The State of South Carolina

Office of the Attorney General

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April 25, 1991

H. Clay Carruth, Research Director
Medical Affairs Committee
The Senate of South Carolina
P. O. Box 142
Columbia, South Carolina 29202

Dear Mr. Carruth:

In a letter to this Office you requested an opinion regarding the probable constitutionality of the provisions of S.715 and H.3655 which would exempt the Eastern Star Home in Sumter County from the regulations of the South Carolina Department of Health and Environmental Control governing licensure and operation of residential care facilities. The exemption would be set forth in Section 44-7-260 (c) of the Code and read:

> The Eastern Star Home in Sumter County is hereby exempt from the provisions set forth in this article. This exemption is valid as long as Eastern Star Home in Sumter County continues the admittance procedures and financial arrangements, which are in effect on the effective date of this act.

In a prior opinion of this Office dated January 15, 1991 it was determined that the Eastern Star Home would be subject to the provisions of Sections 44-7-110 et seq. but indicated that legislation could be sought which would remove the Home from the requirements. The opinion however cautioned "... an exemption strictly limited to the Eastern Star Home may be subject to constitutional challenges."

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.

It might be argued that the referenced legislation violates provisions of Article III, Section 34 (IX) of the State Constitution. For these reasons following, however, we believe that the presumption of constitutionality could be upheld if constitutionality of the legislation was challenged under this section.

Article III, Section 34 (IX) of the State Constitution prohibits the adoption of a special law where a general law may be made applicable. As stated in Shillito v. City of Spartanburg, 214 S.C. 11, 51 S.E.2d 95 (1948), however,

> The language of the Constitution which prohibits a special law where a general law can be made applicable, plainly implies that there are or may be cases where a special Act will best meet the exigencies of a particular case, and in no wise be promotive of those evils which result from a general and indiscriminate resort to local and special legislation. There must, however, be a substantial distinction having reference to the subject matter of the proposed legislation, between the objects or places embraced in such legislation and the objects and places excluded. The marks of distinction upon which the classification is founded must be such, in the nature of things, as will in some reasonable degree, at least, account for or justify the restriction of the legislation.

214 S.C. at 20. Factors to be considered in determining whether S.715 and H.3655 may conflict with Article III, Section 34 (IX) include: whether the bills would meet the exigencies of a particular case, Townsend v. Richland County, supra; whether the bills promote the evil sought to be prevented by Article III, Section 34, Timmons v. South Carolina Tricentennial Commission, 254 S.C. 378, 175 S.E.2d 805 (1970); whether peculiar conditions requiring special treatment may exist, Shillito v. City of Spartanburg, supra; and as noted above, whether the General Assembly has found a rational reason to justify treating some situation differently from others.

While not conclusive, legislative findings are given "great weight" in considering whether a classification made by the General Assembly is rational. Dovan v. Robertson, 203 S.C. 434, 27 S.E.2d 714 (1943); Ruggles v. Padgett, 240 S.C. 494, 126 S.E.2d 553 (1962); Townsend v. Richland County, supra, Op. Atty. Gen. dated September 26, 1984. Thus, legislative findings would be accorded great weight by a court considering the constitutionality of the referenced legislation.

While the legislation in question contains no legislative findings, there may well be "marks of distinction" about the Eastern Star Home which would authorize a special exemption. If such "marks of distinction" would be taken into account by the General Assembly in adopting the referenced legislation, this Office is of the opinion that the presumption of constitutionality would prevail. Ascertainment of these facts would be outside the scope of an opinion of this Office. Op. Atty. Gen. dated December 12, 1983. Of course, unless and until a court declares otherwise, this legislation, as any other legislative enactment, is entitled to a presumption of constitutionality.

With kind regards, I am

Very truly yours,

Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:

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