

The State of South Carolina



Office of the Attorney General

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April 5, 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 April 3, 1991, you have asked for the opinion of this Office as to the constitutionality of H.3641, R-44, an act amending S.C. Code Ann. § 50-11-870 (1990 Cum. Supp.) to designate the specified portion of Clarendon County 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 44 of 1991 amends § 50-11-870 to add the specified area of Clarendon County to the areas of the state declared to be bird sanctuaries, thus outlawing the use of shotguns, rifles, pellet guns, and BB guns within the area. The specified area is located wholly within Clarendon County. Thus, H.3641, R-44 of 1991 is clearly an act for a

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specific county. 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.3641, R-44 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 Clarendon 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 (9) 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.

While we applaud the efforts being made to protect the birds and wildlife in this State and in Clarendon County in particular, we must nevertheless advise that H.3641, R-44 would

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be of doubtful constitutionality. Of course, this Office possesses no 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