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June 1, 1992

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

Dear Mr. Elam:

By your letter of May 27, 1992, you have asked for the opinion of this Office as to the constitutionality of H.4799, R-496, an act to provide for the levying of tax millage for certain political subdivisions, agencies, and commissions in Charleston County. For the reasons following, it is the opinion of this Office that the Act is of doubtful constitutionality, with the exception of one section.

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 has been, and continues to be, the opinion of this Office that sections one through six and eight through ten of this act are most probably unconstitutional. For further discussions on this matter, I refer you to opinions of this Office dated May 30, 1990; May 8, 1989; June 3, 1988; May 22, 1987; June 4, 1986; June 21, 1985; June 18, 1984; June 7, 1983; January 6, 1983; June 2, 1983; June 14, 1982; and June 6, 1980. Section seven would probably pass constitutional muster, as concluded in opinions dated May 30, 1990; May 8, 1989; June 21, 1985; June 4, 1986; May 22, 1987; and June 3, 1988.

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The political subdivisions, agencies or commissions listed in sections one through six, eight, and nine are located wholly within Charleston County. Thus, H.4799, R-496 of 1992 is clearly an act for a 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.4799, R-496 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). 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:ss

REVIEWED AND APPROVED BY:

Robert D. Cook

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Executive Assistant for Opinions