

The State of South Carolina



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April 11, 1989

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Dear Mr. Elam:

You have asked whether S.528, R-69 is constitutional. Such legislation revises the magistrates' jury areas in Greenville County and provides for the number and location of magistrates in that County. It is our opinion that this bill would pass constitutional muster.

In considering the constitutionality of a legislative enactment, 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 a legislative enactment unconstitutional or to make the necessary finding of fact prior to finding a legislative enactment unconstitutional.

At first blush, it may appear that the provision revising jury areas in Greenville County is violative of Article VIII, Section 7 of the State Constitution which forbids the General Assembly from enacting a law for a specific county. However, upon closer examination, it is clear that the legislation deals with matters concerning this State's court system. As the South

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Carolina Supreme Court stated in Douglas v. McLeod, 277 S.C. 76 at 80, 282 S.E.2d 604 (1981), Section 14 (4 and 6) of Article VIII of the State Constitution "effectively withdraws administration of the State judicial system from the field of local concern." The Court held in Douglas, supra, that magistrates' courts fall within this provision of Article VIII. Therefore, Article VIII, Section 7 would be inapplicable to the referenced legislation.

Neither does the legislation appear to contravene Article III, Section 34 of the State Constitution which prohibits the General Assembly from enacting special legislation. In 1981, the General Assembly in Section 22-2-190 of the Code by general law set forth jury areas for magistrates' courts in all counties of the State. Since that time the General Assembly has routinely amended this provision by enacting legislation dealing with the jury areas for specific counties. See, e.g., Act No. 445 of 1988 (Berkeley County); Act No. 6 of 1987 (Beaufort County); Act No. 318 of 1986 (Laurens County). Therefore, it is apparent that the General Assembly has construed this type of legislation as not requiring a general law. It has been held that the contemporaneous construction of the Constitution by the General Assembly is entitled to great respect. McCull v. Marlboro Graded School District, 143 S.C. 120, 141 S.E. 265 (1928). Also, in examining constitutional questions, custom or practice in dealing with an issue is entitled to deference. Marsh v. Chambers, 463 U.S. 783 (1983). Moreover, Article III, Section 34, Subsection X of the State Constitution permits the General Assembly to enact "special provisions in general laws." In view of the fact that special legislation is virtually the only means by which the Legislature can address the amendment of Section 22-2-190, we prefer to view S.528, R-69 as merely the enactment of a special provision in a general law and thus constitutionally permitted.

As noted, S.528, R-69 also sets forth the number and location of magistrates in Greenville County. We deem this provision also to be constitutional. Article V, Section 26 of the State Constitution mandates that "(t)he Governor, by and with the advice and consent of the Senate, shall appoint a number of magistrates for each county as provided by law." See also: Section 22-1-10 of the Code. Thus, the State Constitution specifically authorizes the General Assembly to set forth the number of magistrates in each county. We view Article V, Section 26 as permitting the General Assembly to establish this number by special legislation as has always been the custom. See, e.g., Act No. 254 of 1985 (Aiken County); Act No. 771 of 1988 (Greenville County).

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If we can be of further assistance, please let us know.

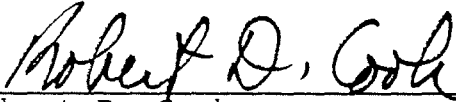
Very truly yours,



Charles H. Richardson
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REVIEWED AND APPROVED BY:



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