

The State of South Carolina



Office of the Attorney General

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May 31, 1989

Mark R. Elam  
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 29, 1989, you had asked for the opinion of this Office as to the constitutionality of S.373, R-163, an act amending Section 7-13-325, Code of Laws of South Carolina (1976 & 1988 Cum. Supp.), relative to use of nicknames on an election ballot, and also amending Section 12-54-240 of the Code, relative to disclosure of taxpayers' names for the preparation of jury lists.

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 act contains two subjects not germane to each other, thus in apparent violation of Article III, Section 17 of the State Constitution. A review of journals of the Senate and House of Representatives on the dates of committee reports, readings, and Senate concurrence in the House amendments does not show that the germaneness was challenged during the enactment process. This Office will not, by an opinion, review the process and impeach an act which appears to have been carefully considered in the parliamentary sense by the General Assembly. Cf., State ex rel. Coleman v. Lewis, 181 S.C. 10, 186 S.E. 625 (1936).

Mr. Elam  
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A review of sections 1 and 2 of the act shows that each concerns the use of names (section 1, nicknames; section 2, taxpayers' names) and each is related in some way to the State Election Commission (section 1, authority to promulgate regulations; section 2, duties imposed under Section 14-7-130 of the Code). A court faced with this issue could use these factors as bases for upholding the act if it were challenged on the basis of germaneness, though this conclusion cannot be completely free from doubt. 1/

While the constitutionality of S.373, R-163 is not completely free from doubt, this Office, as do the courts, must resolve this issue in favor of upholding the constitutionality of the act. Only a court could say with finality or certainty that the act is clearly unconstitutional.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

*Robert D. Cook*

Robert D. Cook  
Executive Assistant for Opinions

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1/ At least one court has declared that the question of germaneness is a question of fact. The court further noted that the line of demarcation between what is and what is not germane is not clear. State ex rel. Nagle v. Leader Co., 37 P.2d 561 (Mont. 1934). Because this Office is limited to commenting on issues of law rather than issues of fact, it may not be appropriate to address the issue of germaneness in an opinion of this Office.