

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-734-3970

June 3, 1988

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 June 1, 1988, you have asked for the opinion of this Office as to the constitutionality of H.4253, R-701, an act establishing a bird sanctuary in a certain portion of Charleston County within the City of Charleston. 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.

This act establishes a bird sanctuary in the specified area of the City of Charleston in Charleston County and makes it a misdemeanor for any person to trap, hunt, molest or attempt to molest any birds' nests or wild fowls' nests within the sanctuary. Criminal penalties are provided therefor. Thus, H.4253,

Mr. Elam
Page 2
June 3, 1988

R-701 of 1988 is clearly an act for a specific county and specific municipality within the 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.4253, R-701 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). Likewise, Article VIII, Section 10 of the State Constitution provides that "[n]o laws for a specific municipality shall be enacted... ." Because H.4253, R-701 addresses only the City of Charleston, contravention of this provision is also a concern.

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 Charleston County, in the City of Charleston. 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(6) of the Code of Laws of South Carolina (1987 Cum. Supp.), Article III, Section 34 is most probably contravened by the act in question. Cf., Ops. Atty. Gen. dated June 8, 1983; June 20, 1983; and June 18, 1984 (copies enclosed).

Mr. Elam
Page 3
June 3, 1988

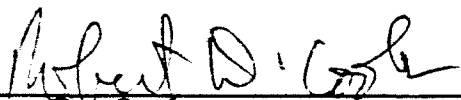
Based on the foregoing, we would advise that H.4253, R-701 would be of doubtful constitutionality. Of course, this Office possesses no authority to declare an act of the General Assembly invalid; only a court would have such authority.

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions