

✓

*summary*

# 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 803-758-3970

February 7, 1985

The Honorable George H. Bailey  
Member, House of Representatives  
100 Metts Street  
St. George, South Carolina 29477

Dear Representative Bailey:

By your letter of February 5, 1985, you have asked whether a legislator could introduce a bill halting consolidation of Dorchester County School Districts I and III as ordered by the Dorchester County School Board. Your concern is whether such legislation would be constitutional. This Office has not examined any proposed legislation and is only commenting on the concept of such proposed legislation.

At the outset, it must be noted that an act of the General Assembly is presumed to be 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. Furthermore, 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 would appear that "for all intents and purposes," consolidation of Districts I and III has been achieved. Section 59-17-60, Code of Laws of South Carolina (1976), provides:

REQUEST LETTER

Continuation Sheet Number 2  
To: The Honorable George H. Bailey  
February 7, 1985

When two or more districts are consolidated under the provisions of § 59-17-50, the county board of education shall file a copy of the order of consolidation in the office of the clerk of court and with the State Board of Education. Such filing shall complete the consolidation of such districts for all intents and purposes.

The order forwarded to this Office is marked as having been filed and recorded in the office of the Clerk of Court for Dorchester County on September 12, 1984. We are advised by the State Board of Education that the order has been filed there also. Thus, consolidation has been completed even though it is not to take effect until the 1985-86 school year. 1/

This Office considered a similar situation in an opinion issued June 8, 1981 and approved by retired Attorney General McLeod, and after extensive research concluded that an act purporting to create a new school district by taking away a portion of an existing school district would most probably be unconstitutional. The constitutional provisions of particular concern were Article III, Section 34 (IV), prohibiting special laws to incorporate school districts, and Article III, Section 34 (IX), prohibiting special laws where a general law may be made applicable. Copies of that opinion and Ops. Atty. Gen., dated July 8, 1983; June 8, 1981; June 19, 1981; and November 30, 1981 are enclosed for your information, as well as a copy of the South Carolina Supreme Court's decision in Kearse v. Lancaster, 172 S.C. 59, 172 S.E. 767 (1934). These opinions and the authority cited therein would be applicable to your proposed legislation. This Office has addressed, and continues to address, the applicability of Article III, Section 34 to a special law applicable to only Dorchester County; we do not comment upon the validity of a general law which provides a method for reinstating pre-existing school districts which have subsequently been consolidated.

---

1/ Clearance under the Voting Rights Act by the United States Department of Justice is presumed for purposes of this letter.

Continuation Sheet Number 3  
To: The Honorable George H. Bailey  
February 7, 1985

Although we have not been furnished a copy of any proposed legislation to review, we would advise that a court considering the issue could conclude constitutional problems may well exist if an act as described by your letter were to be enacted. However, only the courts of this State could so declare the act to be unconstitutional; unless or until that time, the act would be presumed constitutional.

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP:djg

Enclosures

REVIEWED AND APPROVED BY:

*Robert D. Cook*

Robert D. Cook  
Executive Assistant for Opinions