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The State of South Carolina

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The Honorable Warren K. Giese
Member, South Carolina Senate
602 Gressette Building
Columbia, South Carolina 29202

Dear Senator Giese:

In a letter to this Office you questioned the constitutionality of certain provisions of the proposed State Residential Landlord and Tenant Act, H. 2119. You particularly referenced that the legislation excludes two groups of individuals from the act. Pursuant to Section 8:

> (t)he following arrangements are not governed by this act:
>
> ...
>
> (5) occupancy by an employee of a landlord whose right to occupancy is conditioned upon employment in and about the premises;
>
> ...
>
> (7) occupancy under a rental agreement covering the premises used by the occupant primarily for agricultural purposes.

You have questioned whether such provisions in excluding the groups included within such exceptions are violative of the Fourteenth Amendment's Equal Protection Clause. 1/

1/ The proposed State Residential Landlord and Tenant Act is taken from the Uniform Residential Landlord and Tenant Act which was approved by the National Conference of Commissioners on Uniform State Laws in 1972. The exclusions from the application of the Act noted by you are practically taken verbatim from the exclusion provisions of the model act. My research has not revealed any cases where the allegations raised by you have been made as to similar provisions adopted by other states.

In considering the constitutionality of an act of the General Assembly, it is presumed that the act is constitutional in all respects. Upon enactment, the legislation 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 Co., 190 S.C. 270, 2 S.E.2d 777 (1939). All doubts 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.

Furthermore, with respect to constitutional considerations, it is well established that so long as the Legislature's classification bears a reasonable relationship to legitimate state policy, it is not violative of the Fourteenth Amendment's Equal Protection Clause. Bradley v. Hullander, 227 S.C. 327, 287 S.E.2d 140 (1982). Any state of facts which can be reasonably conceived to sustain the classification will be assumed to have existed at the time the law was enacted. 16A C.J.S., Constitutional Law, § 505 at p. 322. Unless a statutory classification is arbitrary, a court will not attempt to substitute its judgement for the Legislature's. Groves v. Bd. of Commrs. of Lake Co., (Ind.), 199 N.E. 137 (1936).

My research has revealed several cases where provisions in laws regulating landlords and tenants were alleged to be unconstitutional in that various classes of tenants were not similarly affected. See: Gardens v. City of Passaic, 327 A.2d 250 (N.J., 1974); Troy Hills Village, Inc. v. Fischler, 301 A.2d 177 (N.J., 1977); Parrino v. Lindsay, 272 N.E.2d 67 (N.Y., 1971); City of Miami Beach v. Frankel, 363 So.2d 555 (Fla. 1978); Spring Realty Co. v. New York City Loft Board et al. 127 Misc.2d 1090 (N.Y. 1985); Kalaydjian v. City of Los Angeles, 197 Cal. Rptr. 149 (Cal., 1983). However, in such cases, the exemptions were upheld as reasonable and therefore not violative of equal protection guarantees.

In Gardens v. City of Passaic, a rent control ordinance was challenged partly on the basis that all rented premises were not similarly treated inasmuch as tenants occupying premises on a month-to-month basis were not similarly affected by the ordinance as were tenants occupying premises under written leases. Also, it was noted that the owners of smaller rental dwellings were excluded from rent control. In upholding the ordinance on this challenge, the court determined that the noted distinctions as to rental premises:

> ... do not represent an invidious discrimination and ... (are) ... based upon rational grounds. Although the legislation could

> have been made applicable to all rentals, and although other suggestions might be made for a different point of demarcation, the court has no right to interfere with the legislative discretion so long as the result comports with rationality.

327 A.2d at 255.

Similarly, as to the exclusions noted above in H. 2119, there has been a legislative determination that the relationships covered by the exclusions should not be included within the provisions of the pending legislation. Moreover, all the exclusions to the applicability of H. 2119 involve instances where there is a further relationship between an occupant and an owner beyond that of typical lessor-lessee. Unless such can be categorized as patently irrational and without any justification whatsoever, the exclusions would not be violative of equal protection guarantees. This Office is unable to make any such categorizations. Accordingly, we do not conclude that the exclusions noted by you violate such equal protection guarantees.

You also questioned the constitutionality of Section 44 (2) (b) of the legislation. Such provision states:

> (i)f the landlord acts in violation of subsection (a), the tenant is entitled to the remedies provided in Section 32 of Article IV as a defense in any retaliatory action against him for possession. In an action by or against the tenant, evidence of a complaint within one hundred twenty days before the alleged act of retaliation creates a presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services. "Presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence. If the defense by the tenant is without merit, the landlord is entitled to reasonable attorney's fees. 2/

2/ This language is also taken from the Uniform Residential Landlord and Tenant Act.

You stated that pursuant to such provision, a court must presume a landlord guilty until contrary evidence is introduced.

As to the creation and use of presumptions in civil cases, it has been stated that in order for a presumption to pass a challenge to its constitutionality, a "rational connection" test must be met. Concerning the distinction between the use of presumptions in civil cases and in criminal cases it has been noted that:

> (a)lthough there are constitutional considerations involved in the use of presumptions in civil cases, the problems are simply not of the same magnitude. In a criminal case, the scales are deliberately overbalanced in favor of the defendant through the requirement that the prosecution prove each element of the offense beyond a reasonable doubt. Any rule that has even the appearance of lightening that burden is viewed with the most extreme caution. However, there is no need for this special protection for any one party to a civil action. The burdens of proof are fixed at the pleading stage, not for constitutional reasons, but for reasons of probability, social policy, and convenience. There is no reason why the same policy considerations, as reflected in the operation of a presumption, should not be permitted further to effect an allocation of the burdens of proof during the course of the trial.

McCormick on Evidence, 345 p. 985 (3rd Ed. 1984).

The "rational connection" test noted above requires that a rational connection exist between the basic facts and the presumed facts. In United States Steel Corp. v. Oravetz, 686 F.2d 197 (3rd Cir. 1982), a challenge was made to a rebuttable presumption contained in the Black Lung Benefits Act on the ground that it was arbitrary and therefore unconstitutional under the due process clause of the Fifth Amendment. In upholding the presumption, the Court cited the decision of the United States Supreme Court in Usery v. Turner Elkhorn Mining Co., 428 U.S. 1 (1976). In Usery, the Court held that presumptions provided in civil statutes involving matters of economic regulation are valid under the due process clause where

"... there shall be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate." 686 F.2d at 201.

In Marquam Investment Corp. v. Beers, 615 P.2d 1064 (1980), the Oregon Court of Appeals dealt with a challenge to the disputable presumption provision set forth in the Oregon Residential Landlord and Tenant Act, ORS 91-865(2). Such provision stated:

> ... (i)n an action by or against the tenant, evidence of a complaint within six months before the alleged act of retaliation creates a disputable presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services.

615 P.2d at 1071.

Among the challenges to such provision was the allegation that it denied due process of law. 3/ In upholding the constitutionality of such provision the Court stated:

> (t)he rational connection underlying the disputable presumption contained in ORS 91.865(2) is manifest. The proven fact is the tenant's complaint, or other specified action, occurring within the six months preceding the alleged act of retaliation. The presumed fact is that the landlord's conduct was retaliatory. It is rational to connect a tenant's complaint to a later retaliatory attempt to oust the tenant.

615 P.2d at 1072.

Referencing the above, a determination must be made as to whether the presumption provided by Section 44 (2) (b) is rational. Pursuant to such provision, the Legislature has determined that a landlord who raises the rent charged a tenant,

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3/ The Court also denied allegations that such provision violated the principle of separation of powers and denied a landlord of a trial by jury.

decreases the services offered to a tenant, or threatens a tenant with a premature eviction within one hundred twenty days of a complaint by the tenant of the type specified in the legislation against his landlord is presumed to be acting in such a manner in retaliation against a tenant. This Office is unable to state that such a determination is totally unreasonable or that there is no basis for such an inference. Again, without such a finding, typically, a court would not overturn such a presumption.

If there are any questions, please advise.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:

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