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The State of South Carolina

Office of the Attorney General

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May 15, 1986

The Honorable Alex Harvin III
The Majority Leader
House of Representatives
204 Blatt Building
Columbia, South Carolina 29211

Dear Representative Harvin:

By your letter of May 12, 1986, you have asked for the opinion of this Office as to the constitutionality of H.3275, R-397, an act requiring, inter alia, that plats to be recorded in Clarendon County first be submitted to the county tax assessor for endorsement before delivering to the clerk of court for recording. 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.

The Act pertains solely to Clarendon County and thus is clearly an act for a specific 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.3275, R-397 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). See also Spartanburg Sanitary Sewer District v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984) (construing Article VIII, Section 7 in the context of legislation for a special purpose district, directing that "the constitutional mandate of Article VIII, § 7 that the General Assembly can modify legislation regarding special purpose districts only through the enactment of general law" be followed).

Based on the foregoing, we would advise that H.3275, R-397 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.

You have also asked whether the General Assembly may, within bounds of the Constitution, enact legislation to repeal an unconstitutional act. The South Carolina Supreme Court has stated that where a statute has been declared to be unconstitutional, all acts amendatory thereto are without force and effect. Dean v. Spartanburg County, 59 S.C. 110, 37 S.E. 226 (1900). Thus, an attempt to repeal an unconstitutional act would be ineffectual. As noted above, H. 3275, R-397 could be declared unconstitutional only by a court; this has not yet happened, as far as we are aware.

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

Robert D. Cook

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