The State of South Carolina

Office of the Attorney General

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May 27, 1986

Helen T. Zeigler, Legal Counsel
Office of the Governor
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Dear Ms. Zeigler:

By your letter of May 23, 1986, you have asked for the opinion of this Office as to the constitutionality of H.3703, R-477, an act removing limitations on the number of mills that may be imposed in Lexington County for the benefit of fire districts in the county. 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 Lexington 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.3703, R-477 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).

We further advise that there are already two general laws which could accomplish the same result of removing the millage limitations for the fire districts of Lexington County. See Section 6-11-273 and 6-11-275, Code of Laws of South Carolina (1985 Cum. Supp.). Thus, a special law is being enacted where general laws are already applicable, thus apparently contravening Article III, Section 34(IX) (no special law to be enacted where a general law can be made applicable). We are unaware of any peculiar local conditions in Lexington County which would require special treatment beyond the scope of Sections 6-11-273 and 6-11-275 of the Code. McElveen v. Stokes, 240 S.C. 1, 124 S.E.2d 592 (1962).

Based on the foregoing, we would advise that H.3703, R-477 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

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PDP/an

REVIEWED AND APPROVED BY:

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