The State of South Carolina

Office of the Attorney General

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June 8, 1987

Mark R. Elam, Counsel to the Governor
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Dear Mr. Elam:

By your letter of June 2, 1987, you have asked for the opinion of this Office as to the constitutionality of H.3092, R-196, which joint resolution prohibits deer hunting in designated areas of Dillon and Marlboro counties for a specified length of time.

In considering the constitutionality of an act or joint resolution of the General Assembly, it is presumed that the act or joint resolution is constitutional in all respects. Moreover, such an act or joint resolution will not be considered void unless its unconstitutionality is clear beyond any reasonable doubt. Thomas v. Macklen, 186 S.C. 290, 195 S.E.2d 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. Notwithstanding these presumptions, we do identify certain constitutional infirmities with respect to H.3092, R-196.

The joint resolution provides that "[t]here is no open season for deer hunting from September 15, 1987, through January 1, 1993, in that area of Marlboro and Dillon Counties surrounded and bounded" by the description contained in the joint resolution. According to Section 50-1-60, Code of Laws of South Carolina (1986 Cum. Supp.), Dillon County is located in

Game Zone No. 7 and Marlboro County is within Game Zone No. 5. With this background in mind, the constitutional provisions relevant to your inquiry will be examined.

Article III, Section 34(VI) provides:

> The 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. ...

Clearly, a joint resolution prohibiting deer hunting is one for the protection of game. Because the joint resolution is for portions of two counties located in separate game zones, the joint resolution is not one which is directed toward protection of game in each of the whole game zones, which would be permissible under Article III, Section 34.

In previous opinions of this Office, acts of the General Assembly which provided for the protection of game in less than zone-wide areas were determined to be unconstitutional. See Ops. Atty. Gen. dated February 13, 1959; February 24, 1960; and October 15, 1962, copies of which are enclosed. Based on the reasoning of those opinions, we are of the opinion that H.3092, R-196 would most probably be found by a court to be violative of Article III, Section 34(VI) if challenged.

Article VIII, Section 7 of the State Constitution prohibits the adoption of laws which are local in nature (for a particular county) or which relate to the powers set aside for counties. Notwithstanding that H.3092, R-196 is a joint resolution covering a small portion of two counties, a home rule question is not

presented by this joint resolution because counties have not been given the power or authority "to provide for the protection of game." Op. Atty. Gen. dated March 6, 1984; cf., Section 4-9-30(5) of the Code.

Based on the foregoing, it is the opinion of this Office that H.3092, R-196 would most probably be found to be violative of Article III, Section 34(VI). Only a court could conclusively make that determination, however.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
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