The State of South Carolina

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The Honorable Raymond C. Eubanks, Jr.
Judge, Probate Court
County of Spartanburg
Room 185, Spartanburg County Courthouse
Spartanburg, South Carolina 29301

Dear Judge Eubanks:

You have asked our advice as to the constitutionality of H-2376. As I understand it, you are particularly concerned with Section 3 of the bill which sets forth the salaries of probate judges pursuant to the following schedule.

> SECTION 3. Article 7, Chapter 21, of Title 8 of the 1976 Code is amended by adding: "Section 8-21-765. The General Assembly shall provide for the salaries of probate judges in the annual general appropriation act according to the following schedule based on the salaries of circuit judges:

Population of the county according to the most recent United States Census:	Percentage of current salary of a circuit judge
(1) More than 200,000	Ninety percent
(2) At least 150,000, but less than 200,000	Eighty-five percent
(3) At least 100,000 but less than 150,000	Seventy-five percent
(4) At least 70,000 but less than 100,000	Seventy percent

(5)	At least 60,000 but less than 70,000	Sixty-five percent
(6)	At least 50,000 but less than 60,000	Sixty percent
(7)	At least 40,000 but less than 50,000	Fifty-five percent
(8)	At least 30,000 but less than 40,000	Fifty percent
(9)	At least 20,000 but less than 30,000	Forty-five percent
(10)	Less than 20,000	Forty percent

Our Supreme Court has on a number of occasions set forth the standard by which the constitutionality of legislation, upon its enactment, is reviewed. In Parker v. Bates, 216 S.C. 52, 56 S.E.2d 723 (1949), the Court stated that

> ... The General Assembly may enact any law not expressly, or by clear implication, prohibited by the State of Federal Constitution; a statute will, if possible, be construed so as to render it valid; every presumption will be made in favor of the constitutionality of a legislative enactment; and a statute will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution.

216 S.C. at 59, quoting Moseley v. Welch, 209 S.C. 19, 39 S.E.2d 133, 137 (1946). Moreover, we have stated repeatedly that while this Office may comment upon the constitutionality of legislation, it is solely within the province of the courts to declare an act of the General Assembly unconstitutional. Op. Atty. Gen., February 7, 1985.

The first question raised with respect to the constitutionality of H-2376 concerns Article V of the South Carolina Constitution, which deals with the Judicial Department; the issue is whether Article V requires the General Assembly to set the same salary for all probate judges in this State.

The Probate Court is unquestionably part of the Uniform Court System mandated by Article V. State v. Court of Probate of Colleton Co., et al., 266 S.C. 279, 223 S.E.2d 166 (1976); Parrish v. Gilstrap, 280 S.C. 184, 312 S.E.2d 4 (1984). Although the South Carolina appellate courts have not specifically ruled with regard to the salaries of the Courts of Probate, the Court has addressed a similar issue with regard to Masters in Equity and Magistrates. In Kramer v. County Council for Dorchester County, 277 S.C. 71, 282 S.E.2d 850 (1981), the Court implicitly held that the General Assembly may approve a uniform salary schedule for Masters in Equity that includes a sliding scale based upon the case load developed by the Court Administration. The Court indicated that the General Assembly has discretion to determine the type of uniform salary scheme to be implemented by it. In addition, in Douglas v. McLeod, 277 S.C. 76, 280 S.E.2d 604 (1981), the Court again appears to interpret Article V, § 1 as allowing a sliding scale of salaries of magistrates to be developed by the General Assembly based upon case load statistics maintained in the office of Court Administration. The Court noted that the precise method for developing the schedule is a question that can only properly be addressed by the General Assembly. Thus, while the Court has required uniformity in the setting of salaries for judicial officers, it appears that a uniform salary system may include a sliding salary schedule for different judges within the same class.

With respect to other constitutional consideration, 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).

It is clear that population is a valid and rational means for determining the salaries of judges. As has been stated generally,

> [f]ee and salary statutes may operate so as to make the amount of compensation of a public officer depend on the population of the political subdivision he serves.

67 C.J.S., Officers, § 226. More specifically, courts have determined that it is reasonable for the Legislature to conclude that population bears a relationship to "the amount of work which may be required of ... officials in [areas] ... of like population...." Groves, supra at 141. As was stated by the Court in State ex rel. Mack v. Guckenberger, 139 Ohio St. 273, 39 N.E.2d 840, 139 A.L.R. 728 (1942), a statute which bases a judge's salary in part upon population "bears relation to the volume of work to be performed by him and to the responsibility for its performance." 139 A.L.R. at 732.

Moreover, such laws, where they operate with respect to the entire State or encompass all in a given class, are general, rather than special in nature, see Article III, § 34, even though but one person or area falls within a a particular classification. Groves, supra. See also, Timmons v. South Carolina Tricentennial Commission, 254 S.C. 378, 175 S.E.2d 805 (1970).

Based upon the foregoing, it is our opinion that H-2376 is constitutional.

Sincerely,

Robert D. Cook
Executive Assistant for Opinions

RDC:djg