

File #111

The State of South Carolina



Office of the Attorney General

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P247

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August 19, 1985

The Honorable Tee Ferguson
Member, House of Representatives
171 Magnolia Street
Spartanburg, South Carolina 29301

Dear Representative Ferguson:

By your letter of July 31, 1985, you have asked this Office to examine Act No. 55, 1985 Acts and Joint Resolutions, and to advise you as to whether implementation is mandatory, how implementation is to be accomplished, and how to have the proper officials abide by the law. Constitutionality of the act has also been questioned.

Act No. 55 of 1985 provides:

Any municipal or county housing authority shall provide for procedures whereby tenants of its property may pay their required rent in various reasonable ways, including but not limited to, payment by personal delivery or by mail.

In construing an act of the General Assembly, the primary objective of the courts of this State and this Office is to determine and give effect to legislative intent if at all possible. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). Words used in the act are to be given their plain and ordinary meanings. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980). The use of the term "shall" connotes mandatory compliance with the act. 2A Sutherland Statutory Construction § 57.03. Thus, we conclude that the General Assembly intended that county and municipal

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housing authorities would be required to provide procedures for various means of payment of rent by their respective tenants. 1/

The act is silent as to which officials within a given housing authority would be responsible for implementing the act. The logical possibilities would be the executive director of an authority or the commissioners themselves. As to municipal housing authorities, Section 31-3-530, Code of Laws of South Carolina (1976), provides that the housing authority [i.e., the commissioners] shall manage and operate its housing projects; Section 31-3-380 authorizes the commissioners to select employees, prescribe their duties, and so forth. Section 31-3-730 makes these same statutes applicable to counties. Unless the commissioners of a particular housing authority have delegated the formulation of procedures to an employee such as an executive director, it would appear to be appropriate that the commissioners themselves promulgate these procedures as part of their management and operation of housing projects.

You have asked for suggestions on how to have the proper officials abide by this law. As to a given housing authority, it should be determined whether the commissioners may have delegated responsibility of this nature to an employee, or whether they have retained this responsibility for themselves. A discussion with the appropriate officials may then be sufficient. In the event that further action is needed to ensure compliance with the act, the litigation which you suggested is one possibility; there are several remedies which might be sought to achieve the desired result.

You advised that a question as to constitutionality of the act has been raised, though you were unaware of which specific constitutional provision was being raised. We note that in considering the constitutionality of an act of the General Assembly, the act is presumed to be constitutional in all respects. An act will not be considered void unless 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

1/ The act did not specify a date by which the procedures were to be in place; rather, the act became effective upon approval by the Governor on April 29, 1985. We suggest that adoption of procedures should take place as soon as possible to carry out legislative intent as to the effective date of the act.

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constitutionality are generally resolved in favor of constitutionality. Furthermore, it is solely within the province of the courts of this State to declare an act unconstitutional.

We would advise that we have reviewed generally the Constitution of the State of South Carolina in conjunction with Act No. 55 of 1985, and that no apparent conflict with the Constitution appears on the face of Act No. 55. If consideration of a particular constitutional provision should be desired, we will be glad to re-examine the provision in question. However, until such time as judicial determination of unconstitutionality is made, we would advise that the act be put into effect as soon as possible.

We trust that the foregoing has satisfactorily responded to your inquiry. Please advise if we may provide clarification or additional assistance.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

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REVIEWED AND APPROVED BY:

Robert D. Cook

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