

1983 WL 181704 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 6, 1983

*1 The Honorable John D. Bradley, III
Member
House of Representatives
1063 Northbridge Drive
Charleston, South Carolina 29407

The Honorable D. L. Aydlette, Jr.
Member
House of Representatives
608B Harborview Road
Charleston, South Carolina 29412

Gentlemen:

Pursuant to your inquiries, Attorney General McLeod directed me to research the constitutionality of acts which provide for the participation of the Charleston County Legislative Delegation [hereinafter the Delegation] in the budgetary and financial affairs of several Charleston County special service districts. This Office takes the position that enacted legislation is presumed constitutional until a court of competent jurisdiction declares otherwise, and this presumption would apply to the provisions related to your inquiries. The following, however, constitutes the opinion of this Office on what likely would be the ruling of a court on the constitutionality of those provisions.

Charleston County Park, Recreation and Tourist District

Section 5 of Act Number 1595 of 1972 provides that the Delegation shall set a tax levy ceiling to meet the necessary costs of the District [subsection (14)] and shall receive recommendations from the District Commission on the amount of certain tax levies [subsection (17)], increases in certain tax millages [subsection (17)], a capital improvements program [subsection (18)], and any proposed expenditure relating to the 'addition, expansion, or major alteration of playground, park, or recreation facilities' [subsection (19)]. In subsections (17), (18) and (19), there are also references to the 'appropriate budgetary authority', but this 'authority' is not further identified. Subsection (21) provides that the District's budgets must be approved by that 'appropriate budgetary authority.'

To the extent that the foregoing provisions authorize the members of the Delegation to participate in determinations on District tax levies, tax millages, capital improvements programs, expenditures and budgets, they likely violate [Article I, § 8 of the South Carolina Constitution](#) in that they assign duties which are executive in nature to members of the legislature. [Bramlette v. Stringer](#), 186 S.C. 134 (1937); [Gould v. Barton](#), 256 S.C. 175 (1971); [Gunter v. Blanton](#), 259 S.C. 436 (1972); [Aiken County Board of Education v. Knotts](#), 274 S.C. 144 (1980). Article I, § 8 provides, in part, that 'no person or persons exercising the functions of one of said departments [*viz.*, legislative, executive or judicial] shall assume or discharge the duties of another.'

Cooper River Park and Playground Commission

Our review of the permanent legislation dealing with this Commission [Sections 51-261 to 51-268.1, as amended] did not reveal that it provides for the involvement of the Delegation in the Commission's budgetary and financial affairs. However, our research did reveal that Section 1 of Act Number 726 of 1978 set the tax levy for the operation of the Commission and

authorized certain expenditures for the 1978-1979 fiscal year. Acts of this nature are likely violative of the prohibition in Article VIII, § 7, which became effective on March 7, 1973, against the enactment of laws for a specific county. [Cooper River Parks and Playground Commission v. City of North Charleston](#), 273 S.C. 639 (1979); [Knight v. Salisbury](#), 262 S.C. 565 (1974); [Torgerson v. Craver](#), 267 S.C. 558 (1976); [Neal v. Shealy](#), 261 S.C. 266 (1973).

James Island Public Service District

*2 Section 5(1) of Act Number 498 of 1961 provides that tax levies for the operation of the District shall be approved by the Delegation. Act Number 1171 of 1964 provides that the Delegation shall approve the expenditure of certain funds by the District. These provisions are likely violative of [Article I, Section 8](#) for the same reasons discussed hereinabove with respect to the Charleston County Parks, Recreation and Tourist District.

North Charleston Sewer District

Our review of the legislation dealing with this District [Act Number 1768 of 1972, as amended] did not reveal that it provides for the involvement of the Delegation in the District's budgetary and financial affairs. Our research did reveal, however, that Act Number 229 of 1981 provides for the annual levy of certain taxes for the District and set that levy for the 1981-1982 fiscal year. Acts of this nature are likely violative of Article VIII, § 7 for the same reasons as discussed hereinabove with respect to the Cooper River Park and Playground Commission.

St. Andrews Parish Parks and Playground Commission

Section 3 of Act Number 228 of 1957 provides that real estate transactions by the Commission must be approved by the Delegation. Act Number 173 of 1961 provides that the annual tax levy necessary for the operation of the Commission shall be approved by the Delegation. These provisions are likely violative of [Article I, § 8](#) for the same reasons discussed hereinabove with respect to the Charleston County Parks, Recreation and Tourist District.

St. Andrews Public Service District

Section 5 of Act Number 443 of 1949 provides that no tax for the operation of the District can be levied until it is approved by the Delegation. This provision likely violates [Article I, § 8](#) for the same reasons discussed hereinabove with respect to the Charleston County Parks, Recreation and Tourist District.

St. John's Fire District

Section 6 of Act No. 369 of 1959 provides that no taxes for the operation of the District can be levied until approved by the Delegation. This provision likely violates [Article I, § 8](#) for the same reasons discussed hereinabove with respect to the Charleston County Parks, Recreation and Tourist District.

St. Paul's Fire District

Our review of the permanent legislation dealing with this District [Act Number 440 of 1949, as amended] did not reveal that it provides for the involvement of the Delegation in the District's budgetary and financial affairs. Our research did reveal, however, that Section 3 of Act Number 726 of 1978 set the tax levy necessary for the operating expenses of the District and authorized certain expenditures for the District for the 1978-1979 fiscal year. Provisions of this nature are likely violative of Article VIII, § 7 for the same reasons discussed hereinabove with respect to the Cooper River Park and Playground Commission.

If a court of competent jurisdiction were to hold the aforementioned provisions unconstitutional, it would, if possible, strike down only those provisions and permit the other provisions of the pertinent acts to remain in effect. [See, Aiken County Board](#)

of Education, *supra*. Furthermore, depending on the circumstances, a court likely may apply such a ruling only prospectively. See, [Crow v. McAlpine](#), 285 S.E.2d 355 (1981); [State ex rel. McLeod v. Civil and Criminal Court of Colleton County](#), 266 S.C. 279 (1976).

Sincerely,

*3 James M. Holly
Assistant Attorney General

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