1981 WL 158159 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
February 23, 1981

***1 Re: Whether House Bill 2072 Violates that Equal Protection Clauses of the State and Federal Constitutions**

The Honorable W. Sterling Anderson
Member
House of Representatives
P. O. Box 11867
Columbia, South Carolina 29211

Dear Representative Anderson:
You have requested an opinion from this office as to whether House Bill 2072, with proposed amendments, violates the equal protection clauses of the state and federal Constitutions. It is my opinion, after reviewing this legislation, that it does not.

House Bill 2072, the 'Young Family Housing Act', provides, inter alia, for a maximum deduction of Fifteen Hundred and No/100 ($1,500.00) Dollars to individual income taxpayers for payments to an individual housing account established to provide funding for the purchase of their first principal residences. In considering whether an Act of the General Assembly is constitutional, we are guided by the principle that every presumption will be made in favor of the constitutionality of the legislative enactment. Cox v. Bates, 237 S.C. 198, 116 S.E.2d 828 (1960). With regard to tax legislation, the Fourth Circuit Court of Appeals has stated:
The fundamental rule is that the State legislature has the right to make reasonable classifications of persons and property for taxation purposes. It is elementary that if the classification bears a reasonable relation to the legislative purpose sought to be effected, and if all members of each class are treated alike under similar circumstances, the equal protection clauses of the Constitution are fully complied with. Byrd v. Blue Ridge Rural Electric Cooperative, 215 F.2d 542 (1954). Accord, Holzwasser v. Brady, 262 S.C. 481, 205 S.E.2d 701 (1974). Newberry Mills, Inc. v. Dawkins, 259 S.C. 7, 190 S.E.2d 503 (1972).

It has been recognized by the courts that the states should be given a great leeway in making classifications between individuals. In Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356 (1973), the United States Supreme Court held that:
The Equal Protection Clause does not mean that a state may not draw a line that treats one class of individuals or entitles differently than others. The test is whether the difference in treatment is an invidious discrimination. Id. at 354.

My review of House Bill 2072 reveals no classification of taxpayers that could be considered palpably arbitrary or invidious. Obviously, the legislative purpose of this Bill is to assist young couples in getting a start in life by making the purchase of a home obtainable during the current period of rising construction costs and interest rates. The Bill also could have the effect of stimulating the depressed home construction industry. It has been recognized that public policy permits reasonable discrimination with respect to tax matters in order to promote fair competitive conditions, equalize economic advantages, or encourage particular industries. 71 Am.Jur.2d, State and Local Taxation, § 173.

***2** House Bill 2072 is similar to numerous other tax acts, such as the homestead exemption for the elderly, which provide tax relief to a segment of the population. The General Assembly, in the exercise of its duties, has determined that there is just ground for the difference in taxation. As previously noted, great leeway is granted in the exercise of this legislative function. Therefore, this office is of the opinion that House Bill 2072 does not deny equal protection under the South Carolina Constitution or the United States Constitution.

Very truly yours,

Richard B. Kale, Jr.
Senior Assistant Attorney General

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