

1983 WL 181917 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 16, 1983

*1 Peter D. Hyman
County Attorney
170 Courthouse Square
Florence, South Carolina 29503

Dear Mr. Hyman:

You have asked for an opinion as to the constitutionality of H-2836, a bill which would create the South Lynches Fire District in Florence and Williamsburg Counties. In addition you have asked other questions relating to the effect of the bill if it should be enacted. It is our opinion that the bill is most probably unconstitutional.

The bill is special legislation that would create a fire district in parts of two counties. Under the Home Rule Act, county councils have been expressly empowered to provide for fire protection in their respective counties. [§ 4-9-30\(5\), Code of Laws of South Carolina](#), 1976 (1982 Cum.Supp.). [Article VIII, § 7 of the South Carolina Constitution](#) prohibits a special law for 'a specific county which relates to those powers, duties, functions, and responsibilities which, under the mandated systems of government, are set aside for counties.' [Kleckley v. Pulliam](#), 265 S.C. 177, 183, 217 S.E.2d 217, 220 (1975). Since fire protection is one of the powers, duties, functions, and responsibilities set aside for counties under the Home Rule Act, [§ 4-9-30\(5\)](#), *supra*, it follows that this bill is most probably unconstitutional. See [Cooper River Park and Playground Comm. v. City of N. Charleston](#), 273 S.C. 639, 642, 259 S.E.2d 107, 109 (1979).

The constitutionality of the bill is not saved by virtue of the fact that it relates to more than one county. Although the Supreme Court upheld a special act for a multicounty airport district in [Kleckley v. Pulliam](#), 265 S.C. 177, 217 S.E.2d 217 (1975), the rationale for that decision was that the subject of the special act 'extend[ed] beyond the purely local concern.' *Supra* at 186, 217 S.E.2d at 221. It was not feasible for the counties included within the airport district to perform this function themselves using only the powers given them by general law. [Kleckley v. Pulliam](#), *supra* at 189, 217 S.E.2d at 223. Here, however, it is apparent that H-2836 deals solely with the local concern of fire protection within the proposed district. The two counties involved could create a similar taxing district by agreement if such were deemed necessary. [Art. VIII, § 13, South Carolina Constitution](#). Since this is a matter committed to the counties under the Home Rule Act, it follows that H-2836 would most probably be unconstitutional. If the bill were unconstitutional, presumably that would moot your additional questions.

Sincerely yours,

David C. Eckstrom
Assistant Attorney General

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