

1981 WL 158233 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 10, 1981

\*1 Honorable Richard W. Riley  
Governor of South Carolina  
State House  
Columbia, South Carolina 29201

Dear Governor Riley:

You have requested an opinion as to whether the third paragraph of H.2042 (R-58) is constitutional. This section provides that anyone who makes public disclosure of records of the State Reorganization Commission and the Legislative Audit Council prior to issuance of final reports shall be guilty of a misdemeanor, with the usual penalties of fine or imprisonment. The bill further provides that

If the person convicted is an officer or employee of the State, he shall be dismissed from office or employment and be ineligible to hold any public office in this State for a period of five years after such conviction.

This section presents a number of constitutional questions, all but one of which can be resolved in favor of constitutionality. The one which cannot be so resolved is that which would arise under [Article XVII § 1A of the South Carolina Constitution](#), which sets forth the qualifications for office, and cases interpreting that section such as [McClure v. McElroy](#), 211 S.C. 106, 44 S.E.2d 101 (1947). That case holds that the Legislature may not add qualifications for constitutional office in addition to those set forth in the Constitution. Thus, the bill in question would be unconstitutional if sought to be applied to constitutional officers, but as a practical matter this situation would be unlikely to arise and in any event would only affect the constitutionality of the Act as applied in those limited cases.

Other constitutional objections such as possible violations of equal protection, due process and cruel and unusual punishment prohibitions, are, in the opinion of this Office without merit. It is unquestioned that the more fundamental right of voting may be lost upon conviction of certain crimes. [Richardson v. Ramirez](#), 418 U.S. 24 (1974). The less fundamental right to hold legislatively-created office or other state employment would appear to be covered by the authority of cases such as [Richardson](#). Another analogy is found in employment discrimination cases in which the right of the State or of private employers to prohibit and refuse employment to convicted persons where the conviction would directly reflect on the convict's qualification for the job have been upheld. The situation envisioned by this bill would fall within the reasoning of such cases, because a rational method of preventing disclosure within government would be to deny employment or other position to persons who make illegal disclosures.

While no cases directly on point have been found, it is the opinion of this Office that the authorities cited above are analogous and that except in the very limited instance noted above, H.2042 would likely be held by a Court to be free from constitutional difficulty.

Sincerely yours,

Kenneth P. Woodington  
Assistant Attorney General

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