

1977 WL 37295 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 7, 1977

\*1 A bill to amend Act 284 of 1969, relating to the membership of the Commissioners of Election in Charleston County so as to increase its membership from five to seven, if enacted by the General Assembly, would probably be violative of Article III, Section 34, Subsection IX of the Constitution of the State of South Carolina, 1895, as amended.

The Honorable Wheeler M. Tillman  
Member  
House of Representatives

QUESTION PRESENTED:

Whether the proposed bill to amend Act 284 of 1969, is violative of the constitutional prohibition against special legislation?

AUTHORITIES CITED:

Section 23-400, Code of Laws of South Carolina, 1962, as amended.

Section 23-400.02, Code of Laws of South Carolina, 1962, as amended.

Section 29-55, Code of Laws of South Carolina, 1962.

Article III, Section 34, Subsection IX, X, Constitution of the State of South Carolina, 1895, as amended.

[McElveen v. Stokes](#), 240 S.C. 1, 124 S.E.2d 592 (1962).

Act 601 of 1961.

Act 284 of 1969.

DISCUSSION:

A bill has been proposed which would amend the existing statutory provisions governing the members of the Commissioners of Election for Charleston County, in order to increase the membership on the board from five to seven members. Section 23-400 of the 1962 Code of Laws of South Carolina, as amended, provides for the appointment of Commissioners of Election for each of the respective counties by the Governor upon the recommendation of the Senator and at least half of the House of Representatives from the respective counties.

Section 23-400.02 provides that the Commissioners of Election for Charleston County shall be appointed 'upon the recommendation of a majority of the Senators of District No. 14 and a majority of the members of the House of Representatives of the county' and shall be five in number.

The bill as proposed would amend Section 23-400.02 by increasing the membership of the Charleston County Election Commission from five to seven.

Article III, Section 34, Subsection IX and X of the State Constitution provides as follows:

The General Assembly of this State shall not enact local or special laws concerning any of the following subjects or for any of the following purposes to wit: . . .

IX. In all other cases, where a general law can be made applicable, no special law shall be enacted . . .

X. . . . Provided, that nothing contained in this section shall prohibit the General Assembly from enacting special provisions in general laws.

In the case of [McElveen v. Stokes](#), 240 S.C. 1, 124 S.E.2d 592 (1962), the South Carolina Supreme Court was faced with a situation substantially identical to that presented here. In that case, Act 601 of 1961, which was a special act pertaining only to the Lee County Forestry Board, and providing for the appointment of five specifically named individuals, their terms of office, and how their successors should be appointed, was challenged as being in violation of Article III, Section 34. An existing code provision, Section 29-55, provided for the appointment of a five member forestry board in each county by the State Commission of Forestry upon the recommendation of the local legislative delegation.

\*2 The lower court held Act 601 to be an amendment to a general law, and thus constitutional as a special provision in a general law within the purview of Article III, Section 34, Subsection X.

The Supreme Court reversed the lower court, stating:

If, in the judgment of the legislature, the situation as it exists in Lee County under the general law should be changed, we see no reason why the legislature could not pass a state-wide Act which would be applicable to Lee County as well as all other counties wherein a similar situation might, perchance, arise. This, however, the legislature has not yet done.

There being, in effect, an applicable general law and there being no showing in the present record before us of any sufficient distinction, need or justification for the special legislation, we conclude that it is clear, beyond any reasonable doubt, that the Act here is in violation of Article III, Section 34, Subsection IX, and is not a special provision in a general law within the purview of Subsection X, as contended by the respondents. [124 S.E.2d 597](#).

As was the case in [McElveen v. Stokes](#), Section 23-400 is an ‘applicable general law,’ and Section 23-400.02 in its present form and in its proposed amended form is ‘not a special provision in a general law within the purview of Subsection X.’ Unless a showing of ‘need or justification for the special legislation’ can be made, Section 23-400.02 in its present form and under the proposed amendment, if challenged, would probably be declared unconstitutional.

#### CONCLUSION:

It is the opinion of this Office that the proposed bill to amend Act 284 of 1969, relating to the membership of the Commissioners of Election in Charleston County, if enacted by the General Assembly, would be violative of Article III, Section 34, Subsection IX of the Constitution of the State of South Carolina, 1895, as amended.

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