

1977 WL 37414 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 6, 1977

*1 Hon. Jarvis R. Klapman
Member
House of Representatives
125 Hendrix Street
West Columbia, South Carolina 29169

Dear Representative Klapman:

You have requested an opinion from this Office as to whether or not Act No. 189 of 1973 [58 STAT. 217 (1973)] is a constitutional enactment in light of the provisions of Act No. 283 of 1975, the 'home rule' legislation. In my opinion, it is.

Inasmuch as Act No. 189 of 1973 has been enacted, this Office must take the position that the legislation is presumed to be constitutional until and unless a court of competent jurisdiction declares it to be otherwise. Moreover, if an action were brought pursuant to the Uniform Declaratory Judgments Act, in my opinion, the legislation would be upheld. Special acts relating to a specific county which are not inconsistent with the provisions of the 'home rule' legislation are valid until January 1, 1980, by virtue of the provisions of Section 3 of Act No. 283 of 1975. There is no provision of which I am aware in the 'home rule' legislation which is inconsistent with the provisions of Act No. 189 of 1973. Moreover, since the 1973 legislation about which you have inquired deals with magistrates, it might very well be that its provisions are outside the purview of Article VIII (the local government article) of the State Constitution and, instead, fall within the scope of Article V thereof (the judicial department article).

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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