

1990 WL 599190 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 30, 1990

\*1 Mark R. Elam, Esquire  
Senior Counsel to the Governor  
Office of the Governor  
Post Office Box 11369  
Columbia, South Carolina 29211

Dear Mr. Elam:

By your letter of May 28, 1990, you have asked for the opinion of this Office as to the constitutionality of H.4896, R-633, an act establishing a bird and wildlife sanctuary in a certain portion of Greenville County within the campus of Greenville Technical College. For the reasons following, it is the opinion of this Office that the Act is of doubtful constitutionality.

In considering the constitutionality of an act of the General Assembly, it is presumed that the act is constitutional in all respects. Moreover, such an act will not be considered void unless its unconstitutionality is clear beyond any reasonable doubt. *Thomas v. Macklen*, 186 S.C. 290, 195 S.E. 539 (1937); *Townsend v. Richland County*, 190 S.C. 270, 2 S.E.2d 777 (1939). All doubts of constitutionality are generally resolved in favor of constitutionality. While this Office may comment upon potential constitutional problems, it is solely within the province of the courts of this State to declare an act unconstitutional.

This act establishes a bird and wildlife sanctuary in the specified area of the campus of Greenville Technical College in Greenville County and makes it a misdemeanor for any person to trap, hunt, molest or attempt to molest any birds, nests or wild fowls' nests within the sanctuary, or to trap, hunt, molest, or attempt to molest in any manner any wildlife in the sanctuary. Criminal penalties are provided therefor. Thus, H.4896, R-633, of 1990 is clearly an act for a specific county.

Article III, Section 34 of the Constitution provides that

[t]he 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:

....

VI. To provide for the protection of game.

....

Provided, That the General Assembly is empowered to divide the State into as many zones as may appear practicable, and to enact legislation as may appear proper for the protection of game in the several zones....

The subject act is clearly a special or local act in that it relates to protection of birds and wildlife in one area of Greenville County on the campus of Greenville Technical College. Because the act is not for the protection of game in the entire zone of which this area would be a part, see Section 50-1-60(1) of the Code of Laws of South Carolina (1989 Cum.Supp.), Article III, Section 34 is most probably contravened by the act in question. Cf., *Ops.Atty.Gen.* dated June 8, 1983; June 20, 1983; June 18, 1984; and June 3, 1988.

Based on the foregoing, we would advise that H.4896, R-633 would be of doubtful constitutionality. Of course, this Office possesses no authority to declare an act of the General Assembly invalid; only a court would have such authority. Sincerely,

\*2 Patricia D. Petway  
Assistant Attorney General

1990 WL 599190 (S.C.A.G.)

---

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.