1993 WL 720131 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
June 16, 1993

*1 Mark R. Elam, Esquire
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Office of the Governor
State House
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Dear Mark:
You have requested the opinion of this Office as to the constitutionality of R270 of 1993 which authorizes the Board of Trustees of School District 3 in Marion County to borrow not exceeding $300,000 for construction related matters and to make certain provisions for the terms of the borrowing. This provision is clearly constitutional under S.C. Const. art. VIII concerning Home Rule. "Creation of different provisions for school districts does not impinge upon the 'Home Rule' Amendment because public education is not the duties of the counties, but of the General Assembly." Moye v. Caughman, 165 S.C. 140, 217 S.E.2d 36, 37 (1975). This law also appears to be constitutional under art. III § 34(IX) which prohibits the enactment of a special law where a general law can be made applicable.

In considering the constitutionality of an act of the General Assembly, the presumption is that the act is constitutional in all respects. The court will not declare such an act void unless its unconstitutionality is clear beyond any reasonable doubt. Robinson v. Richland County Council, 293 S.C. 27, 358 S.E.2d 392 (1987). All doubts of constitutionality are generally resolved in favor of constitutionality. While this Office may comment upon potential constitutional problems, to declare an act unconstitutional is solely within the province of the courts of this State. Applying this presumption to R270 supports a conclusion that this law would most probably be found to be constitutional despite the Supreme Court's recently finding an education law unconstitutional under art. III § 34. Horry County v. Horry County Higher Education Commission, 306 S.C. 416, 412 S.E.2d 421 (1991).

In Horry County, the Supreme Court has recognized the broad legislative power of the General Assembly in dealing with education under art. XI of the Constitution, but the court made clear that education is not exempt from special legislation restrictions of the Constitution. The court struck down legislation for the Horry County Higher Education Commission under art. III § 34 because it found that a general law could be fashioned to provide ad valorem property tax funding for all colleges and universities and that the record was "... devoid of any peculiar local conditions which require special treatment for coastal Carolina" as to those taxes; however, Moseley v. Welch, 209 S.C. 19, 39 S.E.2d 133, 138 (1946), recognized considerations that may allow R230 to avoid unconstitutionality under art. III § 34. The court stated that "[i]t is exceedingly doubtful whether a general law, uniform in operation throughout the state, regulating the measure of aid to be given by the counties to the districts or the extent of control which should be vested in the county boards of education, could be made applicable." Moreover, Moseley quoted the special referee in that case who held that the numerous special legislation provisions for the fiscal affairs of the schools and the counties of this State was "... at least indicative of a consistent legislative opinion that conditions in the various counties are such as to preclude uniformity of treatment in relation to the administration of school affairs." Id. According to the court, that conclusion of the General Assembly was "entitled to much respect and in doubtful cases should be followed." Id. Although certain general laws do exist as to borrowing (see e.g. S.C. Const. art. X § 15, S.C.Code Ann. § 11-27-50 (1986) and § 59-71-10, et seq. (1990)), a court might uphold R270 on the basis of the above presumption and the language quoted from Moseley. See also Horry County, art. X § 34 and Gillespie v. Pickens County, 197 S.C. 217, 14 S.E.2d 900 (1941).

*2 Although the conclusion of this Office is that R270 would most probably be found to be constitutional, the Horry County decision does indicate that R270 carries some risk of being found unconstitutional if a court were to conclude that a general law could be fashioned on its subject and that no peculiar local conditions required special treatment for the district.

If you have any questions, please let me know.
Yours very truly,

J. Emory Smith, Jr.
Deputy Attorney General

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