

1990 WL 599195 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 30, 1990

*1 The Honorable Irene K. Rudnick

Member

House of Representatives

310-D Blatt Building

Columbia, South Carolina 29211

Dear Representative Rudnick:

I am writing in response to your request for an opinion concerning the constitutionality of bill H.4419. You state that the bill, which requires suspension of a driver's license for certain drug offenses, appears to be a bill of attainder and may, therefore, be of questionable constitutionality.

Initially, it should be noted that, upon approval from 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.

S.C. Atty. Gen. Ops. dated January 20, 1987, June 3, 1988, and September 19, 1988. However, as to the present version of H.4419, this Office does not believe the provision to be unconstitutional as being a violation of the prohibition against bills of attainder.

H.4419, as presently proposed provides that

(t)he driver's license of a person, upon conviction, entry of a plea of guilty or of nolo contendere, or forfeiture of bail, for a second or subsequent offence of selling or attempting to possess marijuana, hashish, cocaine, crack cocaine, lysergic acid diethylamide (LSD) or its compounds, or heroin must be suspended for six months.

A bill of attainder is defined as

(s)uch special acts of the legislature as inflict capital punishment upon persons to be guilty of high offenses, such as treason and felony, without any conviction in the ordinary course of judicial proceedings.

BLACK'S LAW DICTIONARY 116 (5th ed. 1979). See also 16A C.J.S. Constitutional Law Section 429 (1984). A bill of attainder is a legislative act which inflicts punishment upon a named person or easily identifiable members of a group without the protection of a judicial proceeding, as opposed to provisions with general application in which courts determine compliance. *Selective Service System v. Minn. Public Interest Research Group*, 468 U.S. 841 (1984); *Nixon v. Administrator of General Services*, 433 U.S. 425 (1977); *United States v. O'Brien*, 391 U.S. 367 (1968); *U.S. v. Brown*, 381 U.S. 427 (1965); *Keyishian v. Board of Regents*, 255 F.Supp. 981 (1966). A bill of attainder is prohibited by the United States and South Carolina Constitutions. U.S. CONST. art. 1, Section 9 and art. 1, Section 10; S.C. CONST. art. 1, Section 4.

In order to resolve whether a bill of attainder is involved, it is necessary to determine whether the bill in question makes a specification of affected individuals, prescribes punishment, and lacks the avenue of a judicial proceeding.

*2 As to the first prong, it is the opinion of this office that the provisions of the bill are not directed to an identified individual or group of individuals but, rather, properly establishes a rule which is applied generally to any person who commits the acts specified.

See *U.S. v. Brown*, supra. The determination of which persons are actual drug offenders as proscribed in the bill would be made in the judicial proceeding in which that individual is convicted of the drug offense. See *Keyishian v. Board of Regents*, supra. The determination of those to which the bill applies is not made by the legislature but by a judicial body.

As to the second prong, the provisions of the bill also fail to prescribe punishment. Our State Supreme Court has previously determined that suspension of a driver's license which is mandatory and a consequence of having committed a separate criminal offense is not punishment for the offense committed and rendered by the court but is a civil matter. *Brewer v. S.C. State Highway Department*, 261 S.C. 52, 198 S.E.2d 256 (1973); *Parker v. State Highway Department*, 224 S.C. 263, 78 S.E.2d 282 (1953).

Lastly, and as to the third prong, it is the opinion of this Office that a judicial proceeding is associated with the provisions of the proposed legislation, contrary to a bill of attainder. Pursuant to the bill, one convicted of certain drug offenses would be subject to a six month suspension of that individual driver's license. The only issue for resolution is whether a conviction followed. The criminal trial which is the subject of the underlying drug violation provides those convicted with a sufficient judicial inquiry upon which the driver's license suspension may be based. See *Dixon v. Love*, 431 U.S. 105 (1977); *Moore v. Timmerman*, 276 S.C. 104, 276 S.E.2d 290 (1981).

For these reasons, it is the opinion of this Office that H.4419 does not violate the proscription against bills of attainder.
Sincerely,

Salley W. Elliott
Assistant Attorney General

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