1994 WL 267915 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
May 31, 1994

*1 The Honorable Thomas L. Moore
Senator, District No. 25
211 Gressette Building
Columbia, South Carolina 29202

Dear Senator Moore:
By your letter of May 23, 1994, you have inquired as to the constitutionality of amendments to two bills presently awaiting third reading in the Senate, specifically H.4800 and H.4826. Each of the bills will be examined separately, following a discussion of general constitutional principles.

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.

H.4800

House Bill 4800 would amend Act No. 476 of 1969, as amended, with respect to the service area of Valley Public Service Authority in Aiken County, so that Aiken County Council would be given authority to determine the boundaries of the service area, and would impose other limitations on provisions of services by the Valley Public Service Authority. Without question, H.4800 in the form identified by "COUNCIL\FLEGIS\FBILLS\FDKA\>3251AL.94" refers only to a public service authority located wholly within Aiken County.

The amendment to H.4800 identified as "DOC.NO. 4800R001.TLM" dated May 3, 1994, would add another section to H.4800, to provide a means for persons residing in an existing rural water district or water distribution special purpose district in Aiken County to petition to create a new and separate rural water district or water distribution special purpose district with all rights and privileges as provided in Article I, Chapter 13 of Title 6 of the South Carolina Code of Laws. Clearly, this amendment applies only to Aiken County.

If adopted, both H.4800 and the amendment thereto would constitute an act for a specific county. Article VIII, Section 7 of the Constitution of the State of South Carolina provides that "[n]o laws for a specific county shall be enacted." Acts similar to H.4800 and the amendment thereto have been struck down by the South Carolina Supreme Court as violative of Article VIII, Section 7. See Cooper River Parks and Playground Commission v. City of North Charleston, 273 S.C. 639, 259 S.E.2d 107 (1979); Torgerson v. Craver, 267 S.C. 558, 230 S.E.2d 228 (1976); Knight v. Salisbury, 262 S.C. 565, 206 S.E.2d 875 (1974); Hamm v. Cromer, 305 S.C. 305, 408 S.E.2d 227 (1991); Pickens County v. Pickens County Water and Sewer Authority, Op. No. 23981 filed in the Supreme Court January 10, 1994.

Based on the foregoing, we would advise that H.4800 and the amendment thereto would be of doubtful constitutionality. [1] Of course, this Office possesses no authority to declare an act of the General Assembly invalid; only a court would have such authority.

H.4826

*2 House Bill 4826 is a general bill which would amend S.C. Code Ann. § 6-11-91, relating to compensation of governing bodies of special purpose or public service districts, so as to authorize a subsistence allowance equal to the lesser of actual expenses or one hundred dollars a day. On the face of H.4826 as the bill was reported out of committee and passed by the House of Representatives, no constitutional infirmities are immediately apparent.

The amendment to H.4826 identified as "DOC.NO. 4826R002.TLM" would add another section to the bill to amend S.C. Code Ann. § 6-11-410, relating to the definition of "special purpose district" for the purpose of enlarging, diminishing, or consolidating the service areas of special purpose districts by action of county councils. We have not been provided any document which would show how the amendment has actually been incorporated into H.4826, how the title has been amended to conform to the amendment, whether the title reflects a single subject, or the like.

On its face, the amendment to H.4826 does not appear constitutionally infirm. It appears to be a general law if adopted, meeting the requirement of Art. III, § 34 of the State Constitution; the language is so broad that it could most probably not be construed as applying to a specific district. It is impossible to predict the scope of entities to which the amendment would apply, and thus the breadth may be greater than intended. (For example, a special tax district established pursuant to S.C. Code Ann. § 4-9-30(5), a general law, might come within the definition.) Another consideration is whether the entire H.4826 now relates to one subject, as is required by Art. III, § 17; certainly both parts relate in some way to special purpose or public service districts. Courts will construe Art. III, § 17 liberally to uphold an act as constitutional if at all practical. Ex Parte Georgetown County Water & Sewer District, 284 S.C. 466, 327 S.E.2d 654 (1985). Thus, Art. III, § 17 may not pose a problem but should be considered. On the whole, however, no constitutional infirmity is readily apparent with respect to the amendment to H.4826 as it has been presented to this Office.

We trust that the foregoing satisfactorily responds to your inquiry. If we may provide additional assistance, please advise.

With kindest regards, I am
Sincerely,

Patricia D. Petway
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Executive Assistant for Opinions

Footnotes

1 It is possible that H.4800 and the amendment thereto would also be deemed violative of other constitutional provisions. Due to your request for assistance at our earliest convenience, we have focused on the most obvious constitutional infirmity.

1994 WL 267915 (S.C.A.G.)

End of Document