

1979 WL 43252 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 14, 1979

*1 Honorable Warren D. Arthur, IV
Member
House of Representatives
State House
Columbia, South Carolina 29201

Dear Representative Arthur:

You have requested an opinion from my Office as to the constitutionality of recently-enacted legislation which adds [Section 58-3-24 to the 1976 Code](#), providing as follows:

No member of the General Assembly or any member of a member's law-firm shall appear before the Public Service Commission in any rate fixing proceeding representing any party in such proceeding for any purposes including political purposes and it shall be the duty of the presiding commissioner to enforce the provisions of this section. Provided, however, this shall not apply to any member of the General Assembly appearing as a witness on either side of any hearing. [Emphasis added.]

In my opinion, the legislation prohibits a legislator from appearing before the Public Service Commission (PSC) in a rate fixing proceeding only as a representative of or on behalf of a party to those proceedings; that is, it prohibits him from appearing as an attorney for any party to those proceedings. This interpretation is borne out by the additional prohibition against any member of a legislator's law firm appearing as an attorney for any party to those proceedings. It does not either expressly or impliedly prohibit a legislator from appearing in his individual capacity as a ratepayer.

Moreover, this legislation must be read in conjunction with Section 8-13-70, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended, which provides in part that a legislator may appear before the PSC whenever he is required by law to appear because of his business interest as an owner or officer of such [regulated] business or in his official capacity as a member of the General Assembly. These types of statutory restrictions which are designed to avoid conflicts of interest regarding public officials and employees have long been upheld against constitutional challenges based upon denial of due process and equal protection of the laws theories. See generally, 67 C.J.S. Officers § 2046 (1978).

Applying the well-established principle of statutory construction that when two interpretations of a statute are possible, one of which is constitutional, then the constitutional interpretation is the one which must be made [see, e.g., [Peoples National Bank of Greenville v. South Carolina Tax Commission](#), 250 S.C. 187, 156 S.E.2d 769 (1967)], my opinion is that the provisions of [Section 58-3-24 of the 1976 Code](#) are constitutional.

Very truly yours,

Daniel R. McLeod
Attorney General

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