

1978 WL 34681 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 2, 1978

\*1 Honorable Alex Harvin, III  
Member  
South Carolina House Of Representatives  
Post Office Box 11867  
Columbia, South Carolina 29211

Dear Mr. Harvin:

You requested an opinion as to the constitutionality of Act No. 621, S.C. STATS. (1973). Since it appears to be a special act prohibited by the Home Rule Amendment to the State Constitution, the statute is of doubtful constitutional validity. However, in my opinion, the act should be regarded as valid until its constitutionality is determined by the court.

The statute under consideration purports to create the Clarendon County Recreation District as a special purpose district lying wholly within Clarendon County. § 1, Act 621, supra. The statute was enacted June 22, 1973.

The State Constitution was amended on March 7, 1973, to provide that '[n]o laws for a specific county shall be enacted . . . ' [S.C. CONST., Art. 8, Sect. 7](#). The South Carolina Supreme Court has interpreted this provision to mean that the General Assembly may not after March 7, 1973, create special purpose districts lying wholly within a county. [Knight v. Salisbury, 262 S.C. 568, 206 S.E.2d 875 \(1974\)](#). Therefore, Act 621, supra, appears to violate the clear constitutional prohibition against laws for a specific county.

Nevertheless, it is a well-established rule of statutory construction that an act should be presumed valid until such a time as it is declared unconstitutional by the court. 2A SUTHERLAND'S STATUTORY CONSTRUCTION §45.11. Therefore, the act must be observed as a valid statute so long as its constitutionality has not been determined by the court. However, if it were challenged in court, whether by a simple declaratory judgment action or otherwise, it would most likely be declared unconstitutional.

It should be noted that, even though the statute might be declared unconstitutional, any actions of the commission taken prior to a determination of unconstitutionality would likely be upheld if challenged. This conclusion is based on the long-standing principal that a statute confers at least a de facto status upon the members of the commission created thereby. 67 C.J.S. [Officers](#), §§ 140, 146. Therefore, the actions taken by the commission would likely be considered a valid exercise of a delegated power.

Sincerely yours,

David C. Eckstrom  
Staff Attorney

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