

1978 WL 34615 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 7, 1978

**\*1 RE: Act No. 271, 1973 Acts and Joint Resolutions**

Mr. John W. Scott  
Director  
State Fund  
1026 Sumter Street  
Columbia, SC 29202

Dear John:

In September of 1975 you requested an Opinion from this Office concerning the Constitutional validity of Act No. 271 of the 1973 South Carolina Acts and Joint Resolutions. Your letter was acknowledged on September 10, 1975, but no Opinion was forthcoming. You restated your request on January 23, 1978.

Your question is whether or not Act No. 271, which provides for the retrospective application of 1962 Code Section 72-305 (now 1976 Code Section 42-15-60), violates the South Carolina or United States Constitutions. Act No. 271 makes retroactive certain beneficial workmen's compensation provisions, but only for State or municipal employees. Your concern in this matter is based on the fact that the State Fund must be responsible for these retroactive benefits while private carriers are not similarly burdened.

Your question has been researched under both the State and Federal Constitutions. The strongest argument against the Act's constitutionality comes under the Equal Protection Clauses. ([Art. I § 3 of S. C. Const.](#) and 14th Amend. of U. S. Const.) Under the requirements of the equal protection clause a law must not be arbitrary and must bear a reasonable relation to the legislative purpose sought to be effected, and all members of each class must be treated alike under similar circumstances. (Citations omitted).

I have also evaluated the statute under S. C. Constitution Article IX, Section 34, which prohibits what is popularly referred to as special legislation. This Section prohibits special laws where a general law can be made applicable.

Whether Act No. 271 meets the aforementioned requirements is a factual and legal determination which could only be made by a Court of competent jurisdiction after full argument. Also, statutes validly passed and enacted are presumed constitutional until determined otherwise by a Court. As a valid law, the statute must be complied with. (Citations omitted).

Based on my initial review of the issues, it is my belief that Act No. 271 is subject to a potential challenge under the Equal Protection Clauses. Such a defect does not clearly appear on the face of the Act, however, and it is therefore not patently unconstitutional. In contrast, I do not believe the Act would violate the special legislation prohibitions of the Constitution.

Because of the fact that this Office cannot advise you that Act No. 271 is patently unconstitutional, you are left with these valid options to pursue. First, you can continue to comply with the law. Second, you can express your (and our) reservation about the constitutionality of the law to the General Assembly and attempt to have the Act repealed. Third,

you could request that the Attorney General bring a declaratory judgment action seeking a judicial determination of the Act's constitutionality.

\*2 I have discussed this question with Assistant Attorney General Karen L. Henderson, one of the attorneys in this Office most familiar with statutory construction, and she concurs with the three alternatives outlined above.

I am sorry I could not give you a simply solution to your problem, but I do hope this analysis will fully explain to you the State Fund's position at the present time.

Sincerely,

George C. Beighley  
Assistant Attorney General

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