1978 S.C. Op. Atty. Gen. 166 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-131, 1978 WL 22599

Office of the Attorney General

State of South Carolina
Opinion No. 78-131
July 6, 1978

***1 In Re: General Appropriations Bill H–3881**

Honorable Ralph King Anderson, Jr.
Member
House of Representatives
Florence County
Box 468
Florence, South Carolina 29501

Dear Mr. Anderson:
Your letter of June 29, 1978, requests my opinion on the following problem as stated by you:
'The South Carolina Senate has added a Permanent Provision to the Appropriations Bill in regard to raising the legal rate of interest from nine percent (9%) to ten percent (10%). I question the constitutionality of this process and legislative procedure. My constitutional objection is based upon the failure of this legislation to comply with the provision of the South Carolina Constitution that mandates the reading of any statewide bill for three times on three separate legislative days in each legislative body.'

The Appropriations Bill as passed by the House of Representatives, and containing some permanent provisions in Part II thereof, was sent to the Senate on April 21, 1978. The Senate added additional permanent provisions, one of which is Section 38 which concerns the increase in legal rate of interest, to which reference is made in your letter. The House did not concur in the amendments made by the Senate and the bill has now been referred to a conference committee.

The amendments proposed by the Senate did not receive a reading on three separate days in the House.

If the legislation concerned a new constitutional amendment, the matter would be free from doubt, in my view, as the reading of the amendments on three separate days would, under the decisions of the Supreme Court of this State construing the application of Article XVI, Section 1, of the Constitution, be mandatory. As stated in Weeks v. Roof, 164 S.C. 398, 405, 162 S.E. 450:
'If the proposed amendments are of such a nature as to create so radical a difference from the original resolution (proposing a new constitutional amendment) as to make it a new act, the failure to read the amendments three times and to spread them on the minutes would be a fatal defect.'

See also Brailsford v. Walker, 205 S.C. 228, 235, 31 S.E.2d 385; Watts v. Oliphant, 246 S.C. 402, 411, 143 S.E.2d 813; and Gebhardt v. McGinty, 243 S.C. 495, 134 S.E.2d 749.

Speaker Blatt referred to this rule in a ruling made by him upon a constitutional amendment proposal. See, 1970 House Journal 1127.

There seems to be a distinction, however, between the requirements imposed by the Constitution with respect to constitutional amendments and those constitutional provisions applicable to ordinary legislation, the latter being

governed by Article III, Section 18, of the Constitution of this State. The distinction is recognized in Gebhardt v. McGinty, supra, and in the more recent case of Moffatt v. Traxler, 247 S.C. 298, 147 S.E.2d 255.

There do not appear to be any decisions by the Supreme Court of this State touching upon the issue presented by the question raised by you. This is apparently due to the adherence to the enrolled act rule in this State which precludes the impeachment of an act by evidence outside the act itself; but this rule is not applicable in all respects as to constitutional amendments.

***2** The general rule, however, with respect to ordinary legislation is cited in 73 Am. Jur.2d Statutes ¶59, as follows:
'Constitutional provisions requiring the reading of a bill before passage on three separate days in each House do not apply to amendments made to a bill while under consideration by the Legislature.'

The authorities are not in agreement upon this principle, however. See 1 Sutherland on Statutory Construction § 10.14, p. 283.

Irrespective of the lack of decisional authority by the Supreme Court of this State upon the precise issue, that court has recognized that the construction placed upon a constitutional requirement regulating the passage of legislation raises a strong presumption of its correctness:
'While the construction placed upon this constitutional provision by the Legislature is not necessarily controlling, there is a strong presumption that it is correct and should be adopted by the court.' Gebhardt, p. 500.

This principle was rejected in Weeks, Gebhardt and Moffatt, each of which concerned the application of Article XVI, Section 1, relating to constitutional amendments, with respect to which a more stringent rule appears to be applicable. See, Gebhardt, p. 502.

With respect to what the Supreme Court has termed 'ordinary legislation,' it is my opinion that the rule is applicable. As far as I can determine, the invariable rule has been that amendments to measures in the circumstances existing here have not been required to be read on three separate days. Upon nonconcurrence, the practice has been to submit the proposition to a conference or free conference committee, and upon the report of such committee being made, to adopt or not to adopt its report by vote in each House of the General Assembly.

I therefore advise that, in my opinion, it is not necessary that the amendments made to H–3881 by the Senate be read on each of three separate days in the House. Any other conclusion would probably nullify a long-standing procedure adopted by both Houses of the General Assembly and I adopt the construction placed upon the constitutional provision by the Legislature itself.
Very truly yours,

Daniel R. McLeod
Attorney General

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