

1975 WL 29668 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 7, 1975

*1 Representative John I. Rogers, III
State House
Columbia, South Carolina 29201

Dear Representative Rogers:

You have requested an opinion as to the constitutionality of Act No. 1021 of 1972 [57 STAT. 2166 (1972)] which, inter alia, created the Marlboro County Council.

This office must take the position that, inasmuch as the Act has been enacted, it is presumed to be constitutional until and unless a court of law declares otherwise. We also advise, moreover, that if an action were to be brought pursuant to the Uniform Declaratory Judgments Act [Sections 10-2001 et seq., Code of Laws of South Carolina, 1962, as amended], the Act would, in our opinion, be upheld. The Local Government Amendment, Section 7 of which prohibits the enactment of special laws for a specific county, did not become operative until it was ratified on March 7, 1973 [58 STAT. 67 (1973)], and, therefore, its prohibition does not apply to the Act under consideration. See, Neel v. Shealy, 261 S.C. 266, 199 S.E.2d 542 (1973); cf., Knight v. Salisbury, 262 S.C. 565, 206 S.E.2d 875 (1974).

You have also requested an opinion as to the constitutionality of a proposed bill, H2326, which relates to the Marlboro County Board of Education. The bill provides for the election of the Board and changes the terms and compensation of its members.

A bill similar to H2326 was reviewed by this office and determined to be violative of Article VIII of the State Constitution as constituting a law for a specific county. See, Letter to Governor James B. Edwards from Attorney General Daniel R. McLeod, dated January 31, 1975. Since then, however, the bill was enacted as Act bearing ratification number R-4 and an action was brought to determine the constitutionality of the Act. See, Moye v. Caughman, et al., (Lexington County, #23020) filed February 11, 1975. On March 14, 1975, the Honorable George Bell Timmerman, Jr., Resident Judge of the Eleventh Judicial Circuit, declared that the Act was constitutional. See, Order of Judge Timmerman dated March 14, 1975.

While the opinion of the Circuit Court does not control on this question since it is not a court of last resort, it does represent the only opinion rendered by a court in this State to date and, as such, we feel that it does offer a judicial guidepost at least until and unless the State Supreme Court decides to the contrary. On the basis of the foregoing, we find that the bill under consideration, H2326, does not violate Article VIII of the State Constitution.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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