

1974 WL 27606 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 22, 1974

\*1 Honorable Wheeler M. Tillman  
Member  
House of Representatives  
Charleston County  
Box 4295  
Charleston Heights, South Carolina 29405

Dear Mr. Tillman:

You have inquired as follows:

'Enclosed is a copy of House Bill No. 1947, dealing with registration by mail, passed by the House on Tuesday, January 15, 1974. As principal author of this measure, I would appreciate receiving your comments concerning the constitutionality of Section 1. Specifically, I am interested in the language 'upon approval of the governing body of each county.' Is this local option permissible within the bounds of our State Constitution?'

Section 1 of H-1947 provides, in part:

'Notwithstanding any other provision of law, the following procedures shall, upon approval of the governing body of each county, be used in the registration of electors, in addition to the procedure otherwise provided by law.'

H-1947, in substance, provides for the registration of electors by mail and dispenses with the necessity of having the elector sign the certificate in the presence of a member of the board or other official of the board.

In my opinion, it is extremely doubtful that the authority given to the governing bodies of counties to provide or not to provide for the registration of electors by mail can be sustained against the contention that it is violative of the equal protection clause of the Constitution of South Carolina. See [Goodale v. Sowel](#), 62 S.C. 516, 40 S.E. 970. The right to register and vote is a zealously protected right and if citizens of one county can be deprived of a procedure for registration by the unfettered action of the governing body of that county, whereas other citizens may be able to avail themselves of such a procedure for registration, there would appear to be a rather clear case of the unequal application of the laws. The State has broad authority in the enactment of legislation but to grant registration rights to some citizens while withholding it from others, solely in the discretion of the governing body of a county, leads me to conclude that such an act is of extremely doubtful constitutionality for the reason stated.

Should the question arise in litigation, a court may strike the phrase 'upon approval of the governing body of each county' from the Act, leaving the remainder intact, but no assurance can be given in this respect. Other constitutional issues may bear upon the validity of this legislation, but these have not been considered in view of the conclusions set forth above.

Very truly yours,

Daniel R. McLeod  
Attorney General

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