

1974 WL 27672 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 19, 1974

***1 Re: No. 309—Agricultural Matters**

Honorable ?? G. Fulmer
Member
House of Representatives
State House
Columbia, South Carolina

Dear Mr. Fulmer:

You have requested that we advise you concerning the constitutionality of the following proposal:

Any timber, crops, growing fruits, vegetables, flowers or ornamental plants which are damaged as a result of the use of the herbicides by any railroad, public utility, or electric cooperative shall entitle the owner to recover treble damages.

The contention has been made that the proposed statute is unconstitutional because it does not apply equally to all users of herbicides. We agree.

The Supreme Court of South Carolina has recently observed:

We have held that the General Assembly has the right to make reasonable classifications of persons and property for public purposes. It is elementary that if the classification bears a reasonable relation to the legislative purpose sought to be effected, and if the constituents of each class are all treated alike under similar circumstances and conditions, there is no infringement upon the equal protection clause of the Constitution. It is sufficient if the act applies equally to all members of the class provided the classification is not purely arbitrary but rests upon some reasonable basis . . . [Hunt v. McNair](#), 255 S.C. 71 at 83, 177 S.E.2d 362 (1970).

Obviously, the purpose of the proposed statute is to encourage users of herbicides to exercise extreme caution when applying that product near marketable and ornamental vegetation, since any failure to do so would subject the wrongdoer to an extraordinary liability as punishment. See 22 AM.JUR.2d Damages § 268 at 363. In our judgment, the proposal does not bear a reasonable relation to the legislative purpose sought to be effected because the classification to which the proposal is applicable does not embrace all users of herbicides. The classification is thus a purely arbitrary one and is unconstitutional. Were the proposed statute to apply to all herbicide users, it would not be invalid. See, [Missouri P.R. Co. v. Humes](#), 115 U.S. 512, 6 S.Ct. 110, 29 L.Ed. 463 (1885).

Best wishes,

C. Tolbert Goolsby, Jr.

1974 WL 27672 (S.C.A.G.)