

1974 WL 28055 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 15, 1974

*1 Senator Allen R. Carter
Box 5818
Charleston, South Carolina 29406

Dear Senator Carter:

You have requested an opinion as to the constitutionality of House Bill No. 2875, which provides for an additional associate judge for the Family Court of Charleston County.

In a consideration of the constitutionality of the Bill, the relevant provisions of the South Carolina Constitution is section 22 of Article V, the Judicial Reform Act, which provides:

Notwithstanding the provisions of this Article, any existing court may be continued as authorized by law until this Article is implemented pursuant to such schedule as may hereafter be adopted.

Consideration must also be given to Act No. 503 of 1973, 58 STAT. 868, which Act reads in pertinent part:

All courts in existence in this State on the effective date of the ratification of Article V of the State Constitution, . . . shall continue in existence, with all the powers and duties vested in them prior to such ratification, until such time as the schedule, provided for in Section 22 of Article V, has been implemented.

In an opinion rendered last year, the Attorney General construed the Act and the Constitutional provision herein above quoted, as follows:

The General Assembly has thus clearly read Section 22 of Article V as meaning that existing courts would be continued, but that they could only be vested with the authority which they possessed prior to the ratification of Article V (Judicial Amendment) which, as noticed, took place on April 4, 1973. I presume that the General Assembly enacted this statute in accordance with what it considered to be the mandate imposed upon it by the constitutional provision to authorize the continuance of existing courts. It has, in so doing, declared that existing courts shall continue, but that they shall possess only the powers which they had prior to ratification of Article V. This legislative construction is entitled to utmost respect, and I follow it. Letter to Senator Isadore E. Lourie dated June 22, 1973.

House Bill No. 2875 provides for a second Family Court associate judge who shall:

. . . have the same powers and perform the same duties as the associate judge of the court presently serving. Section 1, House Bill No. 2875.

Clearly, then, the Bill does not effect a change in the present powers and duties of the Charleston County Family Court associate judge; it merely increases the number of associate judges, both of whom will possess the same authority and perform the same duties. (See Section 15-1124, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended, providing that if the lone associate judge presently serving is absent or ill, the Charleston County judge of probate has the authority to discharge his duties.)

For the foregoing reasons, the opinion of this Office is that House Bill No. 2875 is constitutional.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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