

1974 WL 27890 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 29, 1974

***1 Re: H2963**

Honorable Robert E. Kneece
Chairman
House Judiciary Committee
1338 Pickens Street
Columbia, South Carolina 29201

Dear Mr. Kneece:

Your letter of July 8, addressed to the Attorney General has been referred to me for consideration and reply. In your letter you enclosed a copy of House Bill 2963 and requested that this Office render an opinion on the constitutionality of the proposed legislation.

The bill in question is designed to prohibit the publication by the news media of the amount of the estates of deceased persons by making such publication a misdemeanor punishable by a fine up to one hundred dollars. The prohibition against publishing the amounts of decedents' estates is grounded on the finding that such publications have 'in certain cases resulted in harassment and even danger to surviving heirs and devisees . . .'

At the outset it is necessary to point out that the protections afforded by the First Amendment to the United States Constitution have been incorporated into the Fourteenth Amendment and are therefore applicable to and binding upon the states. [Gitlow v. New York](#), 268 U.S. 652 (1925). Additionally, Article I, Section 2 [formerly Article I, Section 4] of the Constitution of South Carolina fully protects the same rights that are protected by the First Amendment to the United States Constitution. [City of Rock Hill v. Henry](#), 244 S.C. 74, 76 135 S.E.2d 718 (1963).

House Bill 2963 now pending before your committee is a legislative attempt to regulate an area of constitutionally protected activity and if enacted in its present form would clearly pose a prior restraint on free speech and freedom of the press. Any form of prior restraint upon the freedom of expression carries a heavy presumption against its constitutional validity. [Carroll v. Commissioners of Princess Anne](#), 393 U.S. 175, 180 (1968). Prior restraints upon the freedom of expression can be imposed only where the expression 'creates a clear and present danger of bringing about a substantial evil which the State has power to prevent.' See, ANNOT. 93 L.ed 1151 (1948). In discussing the clear and present danger doctrine as it applies to attempted prior restraints upon newspaper publications, the United States Supreme Court in [Bridges v. California](#), 314 U.S. 252 (1941) stated:

'oreover, the likelihood, however great, that a substantial evil will result cannot alone justify a restriction upon freedom of speech or press. The evil itself must be 'substantial,' [cite omitted]; it must be 'serious,' [cite omitted], and even the expression of 'legislative preferences or beliefs' cannot transform minor matters of public inconvenience or annoyance into substantive evils of sufficient weight to warrant the curtailment of liberty of expression [emphasis added].

[314 U.S. at 262-263.](#)

The fact that certain persons have been harassed as a result of the publication of the amounts of decedents' estates by the news media does not, in our opinion, raise a 'clear and present danger' of substantial evil of sufficient weight to warrant the curtailment of liberty of expression by the General Assembly.

*2 It is, therefore, the opinion of this Office that H2963 is constitutionally infirm.

Very truly yours,

Ellison D. Smith, IV
Assistant Attorney General

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