

1974 S.C. Op. Att'y. Gen. 251 (S.C.A.G.), 1974 S.C. Op. Att'y. Gen. No. 3842, 1974 WL 21345

Office of the Attorney General

State of South Carolina

Opinion No. 3842

August 12, 1974

*1 Senator Thomas E. Smith, Jr.

100 Walnut Street

Pamplico, South Carolina 29583

Dear Senator Smith:

You have requested an opinion from this office as to the constitutionality of proposed amendments to Sections 15–1608.3 and 15–1608.4 of the South Carolina Code of Laws, 1962, as amended.

A consideration of the constitutionality of the proposed¹ Legislation involves, primarily, Section 22 of Article V of the South Carolina Constitution, 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 too be given to Act No. 503 of 1973, 58 STAT. 868, which 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 hereinabove 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 noted, 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.

The legislation involved in this case proposes, first, to amend Section 15–1608.3 by changing the method by which cases within the jurisdiction of both the Florence County General Sessions Court and Civil and Criminal Court can be transferred from one court to the other; this change would, most probably, not be unconstitutional inasmuch as the change relates to the powers and duties of the solicitor and not of the court. The legislation also proposes to amend Section 15–1608.3 by granting to the grand jury sitting in the Civil and Criminal Court the power to consider a bill of indictment in cases that fall within the jurisdiction of the General Sessions Court only; this amendment would, in our opinion, effect a change in the power of the court by increasing the power of an arm of the court, *i.e.*, the grand jury, and would, therefore, be unconstitutional.

The legislation further proposes to amend Section 15–1608.4 by providing that the Civil and Criminal Court remain continuously open for the transaction of non-jury criminal matters; this amendment, in our opinion, is violative of Article V in that it seeks to diminish the power of the Civil and Criminal Court by statutorily prescribing the non-jury terms of the court.

With kind regards,

*2 Karen LeCraft Henderson
Assistant Attorney General

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