

1974 WL 27964 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 18, 1974

*1 The constitutionality of an Act of the General Assembly is presumed, However, the constitutionality of H. 3428, Acts of 1974, is questionable.

Honorable Jack Q. Gerrald
Horry County Auditor
Conway, South Carolina 29526

Dear Mr. Gerald:

Reference is made to your letter of September 17, 1974, and to the request therein for the opinion of this office concerning the constitutionality of an Act of the General Assembly of 1974 here referred to as H. 3428. The duties relative to the valuation, assessment and return of properties for taxation were devolved upon the Horry County Board of Tax Assessors, and the Board was appointed by the County Auditor. Section 65-1823 of the Code. These duties insofar as they relate to real property have been devolved or transferred by Act H. 3428 upon a county tax assessor who is to be appointed by the Horry County Legislative Delegation.

You inquire as to the constitutionality of the Act, and this office advises that under settled rules of law every Act is presumed to be constitutional and the Court is the only tribunal that can resolve the issue of the constitutionality of an Act.

With such in mind, this office advises that the constitutionality of the 1974 Act is questionable for two reasons. The first is Article VIII, Section 7 of the Constitution that provides:

‘The General Assembly shall provide by general law for the structure, organization, powers, duties, functions, and the responsibilities of counties, including the power to tax different areas at different rates of taxation related to the nature and level of governmental services provided. Alternate forms of government, not to exceed five, shall be established. No laws for a specific county shall be enacted and no county shall be exempted from the general laws or laws applicable to the selected alternative form of government.’

The Supreme Court recently held an Act creating a recreational district in Dorchester County to be unconstitutional because of this Article. [Knight v. Salisbury, 206 S. E. 2d 875](#). The 1974 Act, H. 3428, is therefore probably in conflict with this Article.

The second reason upon which the constitutionality of the Act is questionable is the provision of Article 1, Section 8 (formerly 14) of the Constitution that states:

‘In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.’

The Act, H. 3428, provides in part as follows:

‘Section 2. The implementation and continuation of the Horry County Tax Equalization Program shall be under the authority of the Horry County Legislative Delegation.’

‘Section 3. There shall be a county assessor for Horry County who shall be appointed by a majority of the resident Horry County Legislative Delegation which majority shall include the Horry resident Senator. * * *. The county assessor shall receive compensation as the legislative delegation shall determine and provide for in the annual county appropriations act. The county assessor shall select such other personnel to assist him in his duties as shall be authorized by the Horry County Legislative Delegation.’

*2 ‘Section 4. The county assessor shall be held responsible for the acts of his office and subject to the direction of the county legislative delegation shall:’

The section then sets out specific duties relative to the assessment of property for taxation. It appears that these provisions may conflict with the above-quoted Article in that they provide for matters other than those generally considered legislative in nature. [Bramlette v. Stringer](#), 186 S. C. 134, 195 S. E. 257; [Gould v. Barton](#), 256 S. C. 175, 181 S. E. 2d 662; [Dean v. Timmerman](#), 106 S. E. 2d 665; [Gunter v. Blanton](#), 192 S. E. 2d 473.

You further request the opinion of this office concerning the effect on taxes in your county for the 1975 tax year if no assessments or valuations are made under the 1974 Act. We respectfully decline to comment on this matter because it rests upon the assumption that no assessor will be appointed, or if one is appointed, that he will not perform the duties of the office.

Yours very truly,

Joe L. Allen, Jr.
Assistant Attorney General

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