1973 S.C. Op. Atty. Gen. 157 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3532, 1973 WL 20992

Office of the Attorney General

State of South Carolina
Opinion No. 3532
May 28, 1973

***1 Re: House Bill 1883**

Honorable Dan T. Marett
Chairman
Agriculture and Conservation Committee
House of Representatives
The State House
Columbia, South Carolina

Honorable L. Mendel Rivers, Jr.
Member
House of Representatives
The State House
Columbia, South Carolina

Honorable Wheeler M. Tillman
Member
House of Representatives
The State House
Columbia, South Carolina

Gentlemen:
As each of you has written with respect to the above bill, I am directing this letter to you jointly in an effort to answer the questions you have posed.

Mr. Marett requested an opinion as to whether H–1883 is or is not constitutional.

H–1883 provides as follows:
'Section 1. Any city, town or township in any county with a population of not more than two hundred fifty thousand and not less than two hundred thousand, according to the last official United States census, shall make available to surfers seventy-five percent of its ocean frontage between September fifteenth and March fifteenth and twenty percent of such frontage between March fifteenth and September fifteenth. The area set aside for surfers shall not be such as to constitute a hazard to health or safety.

'Surfer' shall mean any person engaged in the sport of riding a surf board on the crest of ocean currents produced by the normal tidal ebb and flow without the aid of mechanical power.'

The census of 1970 shows that cities in three counties would be affected, to wit, Charleston, Richland and Greenville, and as Charleston is the only one of these three counties with a coastal area, the bill is therefore applicable to cities and townships in Charleston County only.

The fact that the bracketing procedure is used is not determinative. 'The question must be decided not by the letter, but by the spirit and practical application of the Act.' Elliott v. Sligh, 233 S.C. 16, 103 S.E.2d 923.

The general prohibition against special legislation is still extant in the Constitution of 1895. A local government amendment to the Constitution ratified by the General Assembly on the 7th day of March, 1973, must be considered also. Section 10 of the local government amendment provides:
'No laws for a specific municipality shall be enacted—.'

The title to the bill reflects that its purpose is to 'require certain counties to provide surfing areas for surfers,' but the body of the Act departs from its intended purpose by requiring cities, etc., in a designated county to provide certain surfing areas for surfers. It is probable therefore that Section 10 of the local government amendment, which provides that 'no laws for a specific municipality shall be enacted', comes into play rather than Section 7 of the local government amendment, which recites that 'no laws for a specific county shall be enacted—.'

These sections, of recent incorporation into the Constitution, have not received judicial construction by the Supreme Court of this State and therefore it is not practical to clearly define their meaning. It is possible that they may be construed to be effective only when the alternate forms of county and municipal governments contemplated by the local government amendment have been devised and adopted by the Legislature. This has not yet been accomplished. The comments of the Committee which drafted the amendment are of some interest in this respect. Report of the Constitutional Study Committee, pp. 88 and 89. A parenthetical statement with respect to special municipal laws as now found in Section 10 recites:
***2** 'New provision, but, in essence, this is the same restriction found in Section 34, Article 3, of the present Constitution.'

It is possible that this new local government amendment may be considered in substitution of the older Article 3, Section 34, particularly where cities are involved, but it appears more likely that it would be considered as complimentary to the older provision and therefore requiring the application of both provisions where possible.

The entire matter must be considered as subject to a final definitive application of these sections by the Supreme Court, but I am of the opinion that it is most probable that special legislation generally is still prohibited with respect to cities and counties and therefore the validity of this legislation is to be judged upon a finding of a rational and reasonable basis for making a distinction between cities in Charleston County and cities in other coastal areas. No such reasonable basis appears for such a distinction. The ultimate decision in this respect must depend upon a showing of special circumstances which exist in cities and towns in Charleston County which do not exist in cities and towns of other coastal counties. If such a distinction can be demonstrated, it is entirely possible that the legislation may be valid. I express doubt in this respect. Such a determination will undoubtedly be considered in the light of the new constitutional provisions, as yet unconstricted, which are found in the local government amendment. My conclusion is that H–1883 is probably unconstitutional on its face.

Messrs. Williams and Tillman have inquired further:
'1. Can regulation of surfing areas at Folly Beach, S. C., be legislated as a local bill?

'2. Can detailed specification of surfing areas at Folly Beach (such as prescribing specific blocks, Twelfth Street, Twenty-first Street, etc.) be made?'

The answer to the first question is the same as what is set forth above. In my view, it is probably immaterial whether a particular town or township is the subject of legislation or whether it is included in groups of towns within a particular county by the bracketing procedure followed by House Fill 1883. The practical application of the statute will be considered, as was done

in Elliott v. Sligh. In my view, legislation of the type contemplated in the two questions above is probably unconstitutional. Admittedly, a rational basis for distinguishing these specific areas from others may be demonstrable but it is not apparent to me.

I may add that it is my understanding that some of these questions may be presented for decision by the Supreme Court in a case to be heard at the June 1973 term.

With best wishes,
Very truly yours,

Daniel R. McLeod
Attorney General

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