

1973 WL 26790 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 26, 1973

**\*1 Re: H-2130**

The Honorable L. Hendel Rivers, Jr.  
Member  
House of Representatives  
Charleston County  
1-A Water Street  
Charleston, South Carolina 29401

Dear Mr. Rivers:

You have submitted to me and requested the opinion of this office with respect to the validity of H-2130 which proposes to establish hours and areas for surfing at Folly Beach in Charleston County During the Summer and Winter months.

You, together with other members of the delegation, previously requested the opinion of this Office as to the validity of H-1883, which was a bill similar in tenor, but which omitted therefrom certain legislative findings and recitals which are found in H-2130. This preamble to H-2130 recites that the General Assembly finds that the wave and surf conditions at Folly Beach are among the best on the Atlantic Seaboard for the sport of surfing and are significantly better than the usual surf conditions existing at most coastal areas elsewhere in this State and that overcrowding of surfers has resulted in serious bodily injury at Folly Beach, necessitating positive steps to assure separation and safety for surfers and non-surfers at Folly Beach. You have submitted also statements from three professional surfers which recite that the Polly Beach area 'holds the most potential for good waves' along the coastal area of this State; that 'their waves at Folly Beach are some of the best on the East Coast'; and that Folly Beach represents one of 7,023 top surfing areas that I've encountered.'

The legislative findings, which are entitled to great weight, as well as the recitals of the professional surfers, convince me that the Folly Beach area is excellent for surfing, but they do not convince me that surfing conditions at Folly Beach are of such peculiar superiority or so uniquely different from other coastal areas in South Carolina as to justify special legislation of this type. I hasten to point out, however, that this is my personal judgment of the facts in attempting to determine if special legislation is justified in this instance; in the final analysis, the question of the propriety of special legislation, if it is permissible at all under new constitutional provisions, is a judicial question which must be determined in the courts upon consideration of all factual and legal issues, pro and con. I therefore reiterate what was stated in the opinion dated May 28, 1973, with respect to H-1883: 'In my view, legislation of the type contemplated—is probably unconstitutional. Admittedly, a rational basis for distinguishing these specific areas from others may be demonstrable, but it is not apparent to me.'

Another facet of the problem which militates against justification for this type of special legislation is the provisions of Section 47-61.2, Code of Laws, 1962, as amended by Act No. 1613, approved August 3, 1972 (72 Acts 3146). Section 47-61.2 provides that every coastal municipality shall have criminal jurisdiction one-half mile into the ocean from the point where the municipal limits of the municipality reach the high water mark of the strand. Act No. 1613 eliminates any doubt about this section's applicability to Folly Beach Township by vesting it with the powers granted to municipalities under the provisions of Section 47-61.2. A general law has now been enacted which affords a means for all coastal municipalities, including Folly Beach Township, to enact ordinances, in their discretion, to regulate surfing by means of criminal ordinance. It is my information that

Folly Beach has enacted such an ordinance, as have the Towns of Hyrtle Beach and the Isle of Palms. This is highly persuasive of the conclusion that a general law can be made applicable to achieve precisely what H-2130 seeks to do.

\*2 I therefore advise that, in my opinion, H-2130 is probably unconstitutional.

Very truly yours,

Daniel R. McLeod

Attorney General

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