

1973 WL 26838 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 13, 1973

*1 Honorable Thomas M. Marchant, III
Member
House of Representatives
Greenville County
Box 5656
Greenville, South Carolina 29606

Dear Mr. Marchant:

Thank you for your letter of June 20, 1973, inquiring as to the constitutionality of House Bill No. 2194, based upon Section 8 of the Constitution of South Carolina. You request verification also as to whether the Bill is in violation of any other sections of the Constitution.

Article VIII, Section 7, of the Constitution, which comprises the local government amendment, provides that forms of government not to exceed five shall be established for the various counties, and recites:

‘No laws for a specific county shall be enacted and no county shall be exempted from the general laws applicable to the selected alternative form of government.’

House Bill No. 2194 amends the Act relating to the Greenville County Planning Commission (Section 14-400.398, Code of Laws, 1962) so as to increase the number of members, provide for appointments, reduce terms of successors to present members of the Commission, and limit the number of successive terms which members may serve. The Greenville County Planning Commission has jurisdiction only in Greenville County and is a separate and autonomous body serving as an adjunct or advisory group to the Greenville County Council.

It is my opinion that this type of legislation is probably not prohibited by Section 7 of Article VIII of the Constitution. I cannot state with complete assurance whether this type of legislation is or is not prohibited by the provisions of the local government amendment as quoted above and therefore utilize the word ‘probably.’ The Supreme Court has not yet construed the new constitutional provision and its construction must be awaited before a definitive judgment can be made. It is probable, in my judgment, that the court will apply the test which it has previously applied to the pre-existing prohibition against special legislation, which is that a special law will not be permitted unless there are special and justifiable reasons which preclude the enactment of a general law applicable throughout the State. If precedent is followed, it is my opinion that this type of legislation will not be found to be in violation of the new constitutional provision; on the other hand, the court may consider that the Legislature has meant precisely what it states and that any legislation relating to a single county will not be acceptable. I doubt that this latter conclusion will be adopted but I am unable to state this with complete assurance.

Initially, the question is presented as to whether or not the prohibition against special legislation found in the new Article relates only to the forms of government which may ultimately be devised by the Legislature. If this is so, H-2194 does not appear to relate to the form of government of Greenville County and would probably be acceptable.

I advise therefore that, in my opinion, H-2194 is probably constitutional. I see no other sections of H-2194 which appear to be violative of any constitutional provision.

Very truly yours,

*2 Daniel R. McLeod
Attorney General

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