

The State of South Carolina

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June 21, 1994

Mark R. Elam, Esquire
Senior Legal Counsel to the Governor
Office of the Governor
Post Office Box 11369
Columbia, South Carolina 29211

Dear Mr. Elam:

By your letter of June 13, 1994, you have asked for the opinion of this Office as to the constitutionality of S.1403, R-560, an act which would prohibit the City of Lancaster from taking certain actions with respect to water or sewer services. For the reasons following, it is the opinion of this Office that the Act is of doubtful constitutionality.

In considering the constitutionality of an act of the General Assembly, it is presumed that the act is constitutional in all respects. Moreover, such an act will not be considered void unless its unconstitutionality is clear beyond any reasonable doubt. Thomas v. Macklen, 186 S.C. 290, 195 S.E. 539 (1937); Townsend v. Richland County, 190 S.C. 270, 2 S.E.2d 777 (1939). All doubts of constitutionality are generally resolved in favor of constitutionality. While this Office may comment upon potential constitutional problems, it is solely within the province of the courts of this State to declare an act unconstitutional.

The act bearing ratification number 560 of 1994 would prohibit the City of Lancaster from discontinuing sewer service to a person who chooses to disconnect from that municipality's water system; prohibit the City of Lancaster from charging an assessment or fee to former customers located outside its corporate limits; and exempt from regulation groundwater wells located outside the City of Lancaster for use as a person's only source of water. Thus, S.1403, R-560 of 1994 is clearly an act for a specific municipality. Article VIII, Section 10 of the Constitution of the State of South Carolina provides that "[n]o laws for a specific municipality shall be enacted, and no municipality shall be exempted from the laws applicable to

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municipalities... ." The terms of R-560 purport to exempt the City of Lancaster from the provisions of Chapter 7 of Title 5, laws applicable to all municipalities." Acts similar to S.1403, R-560 have been struck down by the South Carolina Supreme Court as violative of Article VIII, Section 7 or 10. See, Cooper River Parks and Playground Commission v. City of North Charleston, 273 S.C. 639, 259 S.E.2d 107 (1979); Torgerson v. Craver, 267 S.C. 558, 230 S.E.2d 228 (1976); Knight v. Salisbury, 262 S.C. 565, 206 S.E.2d 875 (1974); Hamm v. Cromer, 305 S.C. 305, 408 S.E.2d 227 (1991); Pickens County v. Pickens County Water and Sewer Authority, Op. No. 23981 filed in the Supreme Court January 10, 1994.

Based on the foregoing, we would advise that S.1403, R-560 would be of doubtful constitutionality. Of course, this Office possesses no authority to declare an act of the General Assembly invalid; only a court would have such authority.

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP:kws

REVIEWED AND APPROVED BY:

Robert D. Cook

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