

# The State of South Carolina



## Office of the Attorney General

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March 1, 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 February 24, 1994, you have asked for the opinion of this Office as to the constitutionality of H.4570, R-302, an act providing a means to fill vacancies on the governing body of the South Greenville Area Fire District. 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 302 of 1994 amends Act No. 67 of 1965, as amended, to provide that a vacancy on the governing body of the South Greenville Area Fire District must be filled by appointment by the Governor for the unexpired portion of the term. An analysis of Act No. 67 of 1965, as amended by Acts No. 142 of 1973 and No. 283 of 1989 reveals that the South Greenville Area Fire District is located wholly within Greenville County. Thus, H.4570, R-302 of 1994 is clearly an act for a specific county. Article VIII, Section 7 of the Constitution of the State of South Carolina provides that "[n]o laws for a specific county shall be enacted." Acts similar to H.4570, R-302

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have been struck down by the South Carolina Supreme Court as violative of Article VIII, Section 7. 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 H.4570, R-302 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.

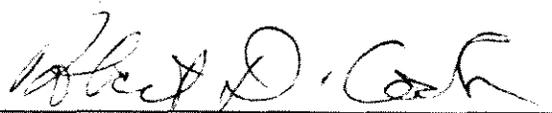
Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



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