

The State of South Carolina



Office of the Attorney General

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September 7, 1994

Mark R. Elam, Esquire
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Dear Mr. Elam:

By your letter of August 23, 1994, you have asked for the opinion of this Office as to the constitutionality of S.1432, R-563, an act embracing relocation of the Folly Beach Public Oyster Ground, an eleemosynary corporation in Florence County, and the Goose Creek Park and Playground Commission. 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.

Section 3 of S.1432, R-563 would amend Act No. 1093 of 1966, as amended, to change the name of the Goose Creek Park and Playground Commission to "Goose Creek Recreation Commission." A review of the relevant acts shows that the Commission is located wholly within Berkeley County. Thus, S.1432, R-563 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." Act similar to section 3 of S.1432, R-563 have been struck down by the South Carolina Supreme Court as

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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.

Section 2 of S.1432, R-563 would add § 33-31-155 to the South Carolina Code of Laws so as to authorize the former board of directors of a dissolved nonprofit corporation or eleemosynary organization located in Florence County to distribute the remaining assets of the organization and to set an effective date by which the action is to be taken lest the property escheat to the state. No reason appears within the act (i.e., by legislative findings or otherwise) as to the need for such a law applicable only to Florence County. Article III, § 34 (IX) and (X) of the State Constitution prohibit local or special laws and particularly provide that where a general law can be made applicable, no special law shall be enacted and further direct the General Assembly to adopt general laws uniform in their operation. It is possible that section 2 of S.1432, R-563 may be violative of these constitutional provisions, though only a court could say so with certainty.

The same constitutional concerns presented as to section 2 of the ratified act may exist as to section 1, as well. The act contains a preamble or recitals wherein the need for the act as to public oyster grounds and the location of private docks adjacent to such grounds is fully set forth. It might be argued that sufficient reason has been established for a local or special law to be enacted rather than a general law in this instance. Again, only a court could say so with certainty.

A final constitutional concern is presented with respect to the entire ratified act. Article III, Section 17 provides that "[e]very Act or resolution having the force of law shall relate to but one subject, and that shall be expressed in the title." A review of the title shows that the subjects embraced within the act are adequately described within the title; the subjects embraced within the act are not related and thus the act cannot be said to "relate to but one subject."¹ It thus appears that this constitutional provision is contravened by the act.

¹ The subjects of the act relate to public oyster grounds, distribution of assets of a dissolved eleemosynary organizations or nonprofit corporations in Florence County, and a special purpose district in Berkeley County.

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Based on the foregoing, we would advise that S.1423, R-563 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

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Assistant Attorney General

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REVIEWED AND APPROVED BY:



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