

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3970
FACSIMILE: 803-253-6283

April 26, 1993

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 April 22, 1993, you have asked for the opinion of this Office as to the constitutionality of H.3787, R-65, an act relating to the New Prospect Area Fire District in Spartanburg County. 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 65 of 1993 amends Act No. 908 of 1964, to increase from twenty-five to two hundred thousand dollars the amount which the New Prospect Area Fire District in Spartanburg County may borrow by tax anticipation notes upon terms and for a period deemed most beneficial by the fire control board. Section 3 of Act No. 908 of 1964 describes the boundaries of the New Prospect Area Fire District in Spartanburg County as the area "encompassed within the lines as

Seamus J. Keller

Mr. Elam
Page 2
April 26, 1993

shown on the plat recorded in the R.M.C. office of Spartanburg County in plat book 47, at page 461." Thus, H.3787, R-65 of 1993 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.3787, R-65 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).

An additional constitutional concern is noted. From a review of Act. No. 908 of 1964, it appears that the New Prospect Area Fire District is likely a special purpose district (See Op. Atty. Gen. No. 84-132 as to attributes of special purpose districts) and thus a political subdivision which would be governed in incurring indebtedness by Article X, §14(8) of the State Constitution when such is to be accomplished in anticipation of taxes. For that constitutional provision to be followed, the General Assembly must authorize terms and conditions by general law; R-65 is a special, not general, law. Thus, R-65 appears to be constitutionally defective on its face. Too, if the board authorized the tax anticipation notes for a period to exceed the ninety-day period authorized in Article X, §14(8), R-65 could be found to be unconstitutional as applied.

Based on the foregoing, we would advise that H.3787, R-65 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.

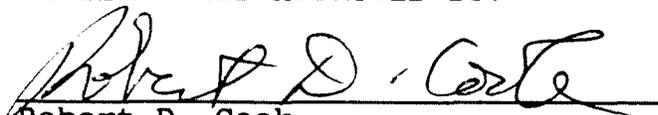
Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/kws

REVIEWED AND APPROVED BY:


Robert D. Cook
Executive Assistant for Opinions