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The State of South Carolina



Office of the Attorney General

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April 23, 1990

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

Dear Mr. Elam:

By your letter of April 19, 1990, you have asked for the opinion of this Office as to the constitutionality of H.4895, R-516, an act enlarging the service area of Broadway Water and Sewerage District in Anderson 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.

This act amends Act No. 549, 1973 Acts and Joint Resolutions, to enlarge the service area of Broadway Water and Sewerage District. A review of the new act and also section 2 of Act No. 549 of 1973 reveals that apparently the entire district is located within Anderson County. Thus, H.4895, R-516 of 1990 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.4895, R-516 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).

Mark R. Elam, Esquire  
Page 2  
April 23, 1990

In addition, Article III, Section 34(IX) provides that "where a general law can be made applicable, no special law shall be enacted[.]" A general law presently exists whereby the service area of special purpose districts in existence on March 7, 1973 may be increased by action of the appropriate county council. See Section 6-11-410 et seq. of the South Carolina Code of Laws. Act No. 549 of 1973 was approved by the Governor and took effect on February 15, 1973. Thus, it would appear that H.4895, R-516 is a special law where a general law is already applicable.

Based on the foregoing, we would advise that H.4895, R-516 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

PDP/nw

REVIEWED AND APPROVED BY:

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