

The State of South Carolina



Office of the Attorney General

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April 9, 1990

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

Dear Mr. Elam:

By your letter of April 6, 1990, you have asked for the opinion of this Office as to the constitutionality of S.1323, R-466, an act providing that the ex officio member of the board of the Clarendon Hospital District shall have voting privileges. 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 466 amends Act No. 375 of 1947, as amended by Act No. 595 of 1980; the latter act specified that the ex officio member of the board of the Clarendon Hospital District had no voting privileges. S.1323, R-466 removes the prohibition against voting by the ex officio board member. Act No. 375 of 1947, in section 1, specifies that the Clarendon Hospital District is comprised of all of the territory within the boundaries of Clarendon County. Thus, S.1323, R-466 of 1990 is clearly an act for a specific county. Article VIII,

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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 S.1323, R-466 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). See also Op. Atty. Gen. dated March 20, 1980 (act relating to Clarendon Hospital District deemed unconstitutional) (copy enclosed).

Based on the foregoing, we would advise that S.1323, R-466 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
Enclosure

REVIEWED AND APPROVED BY:

Robert D. Cook
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