

The State of South Carolina



Office of the Attorney General

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March 20, 1990

The Honorable John Rama
Member, House of Representatives
326-A Blatt Building
Columbia, South Carolina 29211

Dear Representative Rama:

I am writing in response to your request for an opinion of this Office as to whether a constitutional problem arises concerning H.4353 which would provide special purpose district boards with the power to place an emergency ban on the burning of trash or debris. You have specifically asked whether a constitutional problem arises with the boards establishing certain actions as crimes and setting criminal penalties because some boards are elected, while others are appointed.

The bill, H.4353, provides:

The governing board of a special purpose district or public service district providing fire protection services may place an emergency ban on the burning of trash or debris within the district for a specified period of time if circumstances require.

Any person violating such an emergency ban is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not more than two hundred dollars or by imprisonment for a term not exceeding thirty days.

It is the opinion of this Office first, that the bill does not allow the boards to provide for criminal penalties. Instead, the bill, complete in itself declares legislative policy and provides

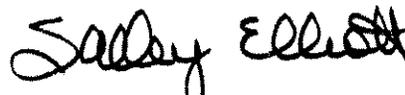
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for the criminal penalty with sufficient specificity as is permitted due to the subject addressed. The boards are then empowered with reasonable discretion to effectuate the legislative purpose. See Cole v. Manning, 240 S.C. 260, 125 S.E.2d 621 (1962)(statute authorized Director of Prisons hired by Board appointed by Governor to determine what articles should not be furnished to prisoners and which provided that violation would be punished as a criminal offense).

Secondly, I am unable to locate any authority which has determined that a constitutional problem would arise because some boards are elected, while others are appointed. While the South Carolina Supreme Court did hold in Crow v. McAlpine, 277 S.C. 240, 285 S.E.2d 355 (1981), that Article 10 §5 of the State Constitution was violated where appointed, as opposed to elected, school board members levied and collected taxes for a school district's budget, the case is not applicable to the facts you present. Article 10 §5 of the South Carolina Constitution provides that "(n)o tax ...shall be established, fixed, laid, or levied, ... without the consent of the people or their representatives lawfully assembled." Clearly the distinction between appointed and elected boards found by the Court in Crow has no application here because Crow involved the power to tax-a power which can not be delegated to an appointive body. I have reviewed our Constitution and have found no provision which H.4353 might offend. However, as only a court can rule with certainty as to the validity of a statute and as this issue has never been addressed by our appellate courts, this opinion is not free from doubt.

Please contact me if I can provide additional assistance or if you wish to discuss this matter further. I have also taken the liberty to include a October 12, 1989 opinion of this Office which may be related to your goal.

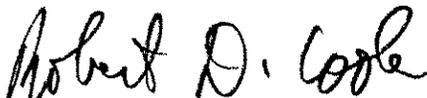
Sincerely,



Salley W. Elliott
Assistant Attorney General

SWE/nnw
Enclosure

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions