

The State of South Carolina



Office of the Attorney General

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May 3, 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 May 1, 1990, you have asked for the opinion of this Office as to the constitutionality of H.5044, R-548, an act authorizing the Boiling Springs Fire District in Greenville County to employ firemen in addition to selecting volunteer firemen. 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.

Act No. 916 of 1970 created the Boiling Springs Fire District in Greenville County. The service area is described in section 1 of that act as that area of Greenville County as shown on a plat filed with the Greenville County Register of Mesne Conveyances. The act bearing ratification number 548 of 1990 would amend Act No. 916 of 1970 to authorize the District's Board of Fire Control to employ firemen in addition to selecting volunteer firemen. Thus, H. 5044, R-548 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."

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Acts similar to H.5044, R-548 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).

Based on the foregoing, we would advise that H.5044, R-548 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.

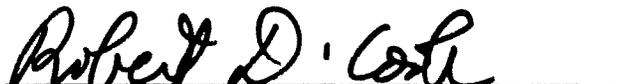
Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/nw

REVIEWED AND APPROVED BY:


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