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The State of South Carolina



Office of the Attorney General

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February 15, 1989

Mark R. Elam
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Dear Mr. Elam:

By your letter of February 15, 1989, you asked for an opinion of this Office as to the constitutionality of H.3152, an act which establishes the Playcard Environmental Education Center in Horry County as a sanctuary for the protection of game, birds and other animals. For the following reasons, it is the opinion of this Office that the referenced legislation 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 referenced legislation in establishing the Playcard Environmental Education Center in Horry County as a game sanctuary provides criminal penalties for the violation of its provisions. H.3152 is clearly an act for a specific county. Article VIII, Section 7 of the State Constitution provides that "(n)o laws for a specific county shall be enacted." Acts similar to H.3152 have been struck down by the State 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); Knight v. Salisbury, 262 S.C. 565, 206 S.E.2d 875 (1974); Opinion of the Attorney General dated June 3, 1988.

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Additionally, Article III, Section 34 of the State Constitution provides that

[t]he General Assembly of this State shall not enact local or special laws concerning any of the following subjects or for any of the following purposes, to wit:

....

VI. To provide for the protection of game.

....

Provided, That the General Assembly is empowered to divide the State into as many zones as may appear practicable, and to enact legislation as may appear proper for the protection of game in the several zones. ...

The referenced legislation is clearly a special or local act in that it relates to the protection of game, birds and other animals in only one area of Horry County, the Playcard Environmental Education Center. Inasmuch as the legislation does not provide for the protection of game in the entire zone of which the area would be a part, see Section 50-1-60(7) of the Code, Article III, Section 34 is most probably contravened by the legislation in question.

Based on the above, we would advise that H.3152 would be of doubtful constitutionality. Of course, this Office is not authorized to declare an act of the General Assembly invalid; only a court would have such authority.

Sincerely,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



Robert D. Cook
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