

# The State of South Carolina



## Office of the Attorney General

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April 25, 1989

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

Dear Mr. Elam:

By your letter of April 20, 1989, you have asked for the opinion of this Office as to the constitutionality H.3779, R-96, an Act to amend Act 865 of 1973 relating to the Buffalo Water and Sewer District, so as to change the method of electing members and to provide for the issuing of certificates. 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.

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...." The South Carolina Supreme Court has consistently struck down acts which relate to a specific county 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).

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The Act under consideration seeks to amend Section 3 of Act 865 of 1973 concerning the composition of the Buffalo Water and Sewer District Board and the filling of vacancies on that board. Section 2 amends Act 865 of 1973 with regard to who may be voting certificate holders and voting procedures at meetings of voting certificate holders. Section 3 of the proposed Act deals with the procedures regarding the first election after the effective date of the Act. From the description of the service area of the Buffalo Water and Sewer District, it appears that the service area is wholly within Union County. Thus, H.3779, R-96 is clearly an Act for a specific county. Accordingly, Article VIII, Section 7 of the Constitution of the State of South Carolina would prohibit such enactment.

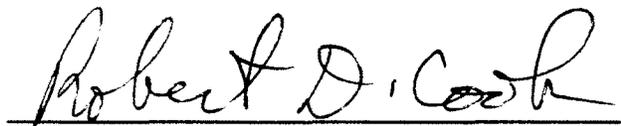
Consistent with the foregoing, we would advise that H.3779, R-96 would be of doubtful constitutionality. Of course, this Office possesses no authority to declare an act of the General Assembly invalid; only a court would have such authority.

Sincerely,

  
Charles H. Richardson  
Assistant Attorney General

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REVIEWED AND APPROVED BY:

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Robert D. Cook  
Executive Assistant for Opinions