

The State of South Carolina

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March 31, 1989

Mark R. Elam
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Office of the Governor
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Dear Mr. Elam:

By your letter of March 29, 1989, you asked for the opinion of this Office as to the constitutionality of H.3501, R-62, an act approving the dissolution of the Una Water District. 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.

This act approves the dissolution of the Una Water District, a special purpose district in Spartanburg County and confirms the transfer of its water, sewerage and fire protection functions to other entities. It also repeals Act No. 582 of 1955 which established the Una Water District. From the description of the service area of the District as set forth in Section 1 of Act No. 582, it appears that the service area is wholly within Spartanburg County. Thus, H.3501, R-62 is clearly an act for a specific county.

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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).

This Office has previously concluded that legislation dissolving a specific special purpose district is unconstitutional. In an opinion dated March 30, 1987, we stated that an Act providing for the dissolution of a rural community water district would most likely contravene Article VIII, Section 7. A copy of this opinion is enclosed.

In another opinion dated January 16, 1989, (copy enclosed) we noted that Section 4-9-80 of the Code provides the method for the dissolution of a special purpose district existing prior to Home Rule. However, our Supreme Court has stated that an Act by the General Assembly dissolving a specific special purpose district pursuant to Section 4-9-80 would likely violate Article VIII, Section 7 of the Constitution. See: Spartanburg Sanitary Sewer District v. City of Spartanburg, et al., 283 S.C. 67, 321 S.E.2d 258 (1984), a copy of which is enclosed. Based upon the Spartanburg case we have concluded that legislation following Section 4-9-80 of the Code would be found to be unconstitutional.

Consistent with the foregoing, we would advise that H.3501, R-62 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

CHR:ss
Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook
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