

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3970
FACSIMILE: 803-253-6283

June 19, 1989

Mark R. Elam
Senior Counsel to the Governor
Office of the Governor
Post Office Box 11369
Columbia, South Carolina 29211

Dear Mr. Elam:

By your letter of June 14, 1989, you have asked for the opinion of this Office as to the constitutionality of H.3985, R-302, an act enlarging the service area of the Dalzell Water District of Sumter County. 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.

The act bearing ratification number 302 amends Act No. 149 of 1965, as amended by Act No. 794 of 1988, to enlarge the service area of the Dalzell Water District, located wholly within Sumter County. Thus, H.3985, R-302 of 1989 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." Acts similar to H.3895, R-302 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).

Mr. Elam
Page 2
June 19, 1989

In addition, it must be noted that Article III, Section 34 of the State Constitution prohibits the enactment of special or local laws. Section 34(IX) particularly provides, "where a general law can be made applicable, no special law shall be enacted." A general law, Section 6-11-410 et seq. of the Code of Laws of South Carolina (1976), already provides a mechanism whereby the boundaries of a district such as the Dalzell Water District may be enlarged. As we advised by an opinion dated May 9, 1988 with respect to the identical issue, H.3895, R-302 would similarly be constitutionally suspect on this basis.

Based on the foregoing, we would advise that H.3895, R-302 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/an

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions