

The State of South Carolina



Office of the Attorney General

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June 21, 1985

Ms. Helen T. Zeigler, Special
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Office of the Governor
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Dear Ms. Zeigler:

By your letter of June 19, 1985, you have asked the opinion of this Office as to the constitutionality of H.3931, R-299, which act sets the millage for several agencies, special purpose districts, and commissions located within Charleston County.

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.

Sections one through seven of the act concern Charleston County agencies, districts, or commissions about which this Office has opined on numerous occasions concerning the setting of millage rates by the General Assembly. See, Ops. Atty. Gen. dated June 18, 1984; June 7, 1983; January 6, 1983; June 2, 1983; June 6, 1980; and June 14, 1982. See also Spartanburg Sanitary Sewer District v. City of Spartanburg, ___ S.C. ___, 321 S.E.2d 258 (1984) (construing Article VIII, Section 7 in the context of legislation for a special purpose district, directing that "the constitutional mandate of Article VIII, § 7 that the General Assembly can modify legislation regarding special purpose districts only through the enactment of general law" be followed). For the reasons cited in the numerous prior opinions,

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it has been, and continues to be, the opinion of this Office that provisions one through seven of H.3931, R-299, setting millage rates for these county agencies and public service districts, are most probably unconstitutional.

Section eight of the act sets the millage for Charleston County's share of the operating expenses for the Berkeley-Charleston-Dorchester Technical Education Center. By an opinion of this Office dated September 23, 1982, this Office advised that because counties have not been empowered under Home Rule to set millage rates for technical education centers, such authority would continue with the General Assembly. Further, legislation to advance public education is permitted by Article XI, Section 3 of the State Constitution, even though this portion of the act would otherwise be for a particular county and thus ostensibly violative of Article VIII, Section 7. Thus, it is the opinion of this Office that section eight would pass constitutional muster and would be separable from the remaining provisions of the act should the constitutionality of the act be challenged. See 2 Sutherland Statutory Construction §§ 44.04, 44.08.

Section nine of the act sets the millage rate for the Charleston County Parks, Recreation and Tourist Commission. Because the appropriate body to appropriate monies for this commission (delegation versus county council) is the subject of litigation, this Office may not comment on the constitutionality of this section of the act, in accordance with the policy of this Office. See Op. Atty. Gen. dated May 15, 1984.

In conclusion, it is the opinion of this Office that sections one through seven of H.3931, R-299, would be of doubtful constitutionality. Section eight would most likely be constitutional and separable from the remainder of the act. No comment is made as to the constitutionality of section nine, as that issue is pending before the courts of this State.

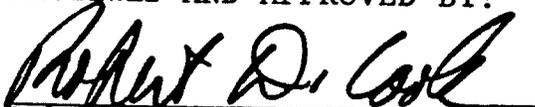
Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP:djg

REVIEWED AND APPROVED BY:


Robert D. Cook
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