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The State of South Carolina



Office of the Attorney General

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June 10, 1986

Mr. George R. Drafts
Chairman of Board of Trustees
Lexington County Hospital
2720 Sunset Boulevard
West Columbia, South Carolina 29169

Dear Mr. Drafts:

You have asked for the opinion of this Office as to the constitutionality of H.3975, presently under consideration by the General Assembly, which provides as follows:

The governing body of any public hospital is prohibited from closing any satellite medical facility operated by it which is located in the Eleventh Judicial Circuit, which has been constructed after 1975, without the written concurrence of the resident members of the House of Representatives and Senators in which this satellite facility is located.

For the reasons following, this bill, in its present form, 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.

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Article III, Section 34 (IX) and (X) of the State Constitution provide that where a general law can be made applicable, general laws uniform in operation, rather than special laws, shall be enacted. The operation of the act is restricted to the Eleventh Judicial Circuit and satellite medical facilities located therein. Where there is no peculiar local condition requiring special treatment, then our Supreme Court has indicated that laws of general applicability should be enacted. McElveen v. Stokes, 240 S.C. 1, 124 S.E.2d 592 (1962). We have not been made aware of any peculiar local conditions within the Eleventh Judicial Circuit which would require special treatment; thus, the bill appears to be a special law where a general law could be enacted.

Operation of satellite facilities by a hospital would most likely involve contractual matters and relations. Article I, Section 10 of the United States Constitution provides that "[n]o state shall...pass any...law impairing the obligation of contracts... ." Similarly, the State Constitution, in Article I, Section 4, provides that "[n]o...law impairing the obligation of contracts... shall be passed... ." The rights and relationships of parties to a contract are discussed thoroughly in G-H Insurance Agency v. Continental Insurance Company, 278 S.C. 241, 294 S.E.2d 336 (1982); both the state and federal prohibitions against impairing contractual obligations discussed therein would be applicable to the bill under consideration herein. Thus, it is very likely that this bill would impair contracts entered into by a hospital relative to operation of satellite facilities.

For the foregoing reasons, it is the opinion of this Office that the bill is of doubtful constitutionality. Of course, only the courts of this State may actually declare an act adopted by the General Assembly unconstitutional.

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP:hcs

REVIEWED AND APPROVED BY:

Robert D. Cook

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Executive Assistant for Opinions