

The State of South Carolina



Office of the Attorney General

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April 24, 1987

The Honorable D. N. Holt, Jr.
Member, House of Representatives
522 D Blatt Building
Columbia, South Carolina 29211

Dear Representative Holt:

By your letter of April 1, 1987, you have requested the opinion of this Office as to the constitutionality of H.2076, which will provide for election of the governing body for the North Charleston District in Charleston County. You have also asked for advice as to how the law relative to the North Charleston Sewer District may be changed to permit election of the District's governing body, as well.

If H.2076 should be adopted by the General Assembly, it must be remembered that 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 (1930). 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.

A review of Act No. 1768, 1972 Acts and Joint Resolutions, reveals that, at present, a single commission governs both the North Charleston District and the North Charles Sewer District. See Section 2, part 8 of Act No. 1768. The commissioners of the districts are appointed by the Governor, three members whose appointment have been recommended by the North Charleston City Council and six whose appointments have been recommended jointly

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by a "majority of the members of the Charleston County Delegation to the House of Representatives and a majority of the Senators from Senatorial District Number 14." See Section 5 of Act No. 1768.

H.2076 would establish a governing body for the North Charleston District separate and apart from the governing body of the North Charleston Sewer District as established by Act No. 1768. These members would be elected for terms of two years in nonpartisan elections. A residency requirement for commissioners and procedures for qualification and elections are also specified.

After reviewing Act No. 1768 and H.2076, we must advise that H.2076 is of doubtful constitutionality. The Districts are located wholly within Charleston County, if not wholly within the City of North Charleston. Article VIII, Section 7 of the State Constitution provides that "[n]o laws for a specific county shall be enacted" Likewise, Article VIII, Section 10 of the Constitution provides that "[n]o laws for a specific municipality shall be enacted" The Supreme Court has struck down as unconstitutional various acts of the General Assembly which were adopted for a single county or part thereof. For examples, see Richardson v. McCutchen, 278 S.C. 117, 292 S.E.2d 787 (1982); Torgerson v. Craver, 267 S.C. 558, 230 S.E.2d 228 (1976); Cooper River Park & Playground Commission v. City of North Charleston, 273 S.C. 639, 259 S.E.2d 197 (1979). The courts of this State would most probably follow the reasoning of these cases to hold H.2076 unconstitutional.

You have also asked about changing the law to provide for the election of the members of the North Charleston Sewer District. The procedure which should be followed to accomplish this would also cure the constitutional infirmities of H.2076. Article III, Section 34 (IX) of the Constitution provides that "where a general law can be made applicable, no special law shall be enacted." An act specifically for the North Charleston Sewer District alone would most probably run afoul of Article VIII, Sections 7 and 10. The solution would be to adopt a law general in form which would permit special purpose or public service districts to choose the option of having the members of the governing bodies elected rather than appointed.

We trust that the foregoing will be responsive to your inquiries. If you need clarification or additional assistance, please do not hesitate to ask.

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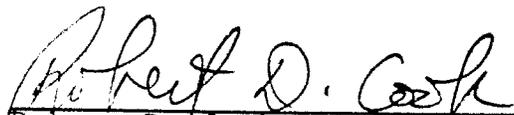
With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions

cc: David C. Eckstrom
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