

1984 WL 249968 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 29, 1984

\*1 The Honorable D. N. Holt, Jr.  
Member  
House of Representatives  
Charleston County Legislative Delegation  
Post Office Box 487  
Charleston, South Carolina 29402

Dear Representative Holt:

By your letter of August 23, 1984, you have asked this Office to advise you as to the constitutionality of Part I, Section 70 of the 1984 Appropriations Act, which section provides a procedure for the electors in a special purpose district to make certain decisions as to selection of the governing body of the district and as to budgetary autonomy. For the reasons following, it is the opinion of this Office that Part I, Section 70 is most probably constitutional.

In considering the constitutionality of a statute, it is presumed that the statute is constitutional in all respects. Moreover, an act of the legislature 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). Furthermore, while this Office may comment upon constitutional problems, it is solely within the province of the courts of this State to declare a statute unconstitutional.

While your letter did not refer to a specific constitutional provision, we understand that you are concerned with [Article III, Section 17 of the Constitution of the State of South Carolina](#), which provides:

Every Act or resolution having the force of law shall relate to but one subject, and that shall be expressed in the title.

Your question is whether Part I, Section 70 is germane to the subject of the Appropriations Act, namely the raising and expenditure of tax monies.

The Supreme Court stated in [Hercules, Inc. v. South Carolina Tax Commission](#), 274 S.C. 137, 262 S.E.2d 45 (1980), that the purpose of [Article III, Section 17 of the Constitution](#) is to prevent the General Assembly from being misled into the passage of bills containing provisions not indicated in their titles, and to apprise the people of the subject of proposed legislation, thereby giving them an opportunity to be heard. . . . The title of an act need not be a complete index of its contents. The constitutional mandate is satisfied where the title states the general subject, and the provisions in the body of the act are germane thereto and provide the means, methods, or instrumentalities for the accomplishment of the general purpose.

[274 S.C. at 141.](#)

The requirement to be met is that the act 'relates to but one subject, with the topics in the body of the act being kindred in nature and having a legitimate and natural association with the subject of the title.' *Id.*; [Maner v. Maner](#), 278 S.C. 377, 296 S.E.2d 534 (1982). Where legislation has been found to be reasonably and inherently related to the raising and expenditure of tax monies, such legislation has been upheld. [Hercules, Inc., supra](#). It would appear that Part I, Section 70 is so related. Part I,

Section 70 does not apply to special purpose districts, the governing boards of which are already elected and have authority to levy taxes. Moreover, the section provides a mechanism to place the election of the members of the governing boards and the approval of the districts' budgets closer to the electorate, if the voters of a given district so choose. The section is related closely to the authority to levy taxes and approval of the budget of a given district and thus would appear to fall within the guidelines of 'reasonably and inherently related to the raising and expenditure of tax monies.'

\*2 The second requirement to be met, to comply with [Article III, Section 17](#), is that the title of the act 'must convey reasonable notice of the subject matter to the legislature and the public.' [Hercules, Inc., supra, 274 S.C. at 142](#). The portion of the title of the Appropriations Act pertaining to Part I, Section 70 provides the following:

AN ACT . . . TO AMEND THE 1976 CODE BY ADDING SECTION 4-11-265 SO AS TO PROVIDE A PROCEDURE BY WHICH THE REGISTERED ELECTORS RESIDING IN A SPECIAL PURPOSE DISTRICT MAY DECIDE WHETHER THEY WISH THE GOVERNING BODY OF THE DISTRICT TO BE ELECTED WITH BUDGET AUTONOMY OR APPOINTED BY THE GOVERNING BODY OF THE COUNTY IN WHICH THE DISTRICT IS LOCATED AND THE COUNCIL HAVING APPROVAL OF THE DISTRICT'S ANNUAL BUDGET, TO PROVIDE, IF THE DISTRICT IS ELECTED, THE PROCEDURE BY WHICH THE MEMBERS OF THE GOVERNING BODY OF THE DISTRICT MUST BE ELECTED, AND TO MAKE THE SECTION APPLICABLE ONLY TO DISTRICTS EXISTING PRIOR TO MARCH 7, 1973, WHICH DO NOT HAVE ELECTED GOVERNING BODIES WITH AUTHORITY TO LEVY TAXES; . . .

Clearly, from reading the title of the Act, this portion of the Appropriations Act is intended to provide a procedure by which electors residing in a special purpose district, which district does not have an elected governing body with authority to levy taxes and which district was created prior to March 7, 1973, to select the methods by which the governing body will be chosen and by which the district's budget will be approved. Comparing that portion of the title above-cited to the text of Part I, Section 70, it is apparent that the title does accurately and fairly put the legislature and the public on notice as to the contents of Part I, Section 70 of the Act. Part I, Section 70 does provide the 'means, methods, or instrumentalities for the accomplishment of the general purpose' of that portion of the Appropriations Act as expressed in the title. [Hercules, Inc., supra, 274 S.C. at 142](#). Thus, the second requirement of [Article III, Section 17](#) appears to have been met.

In conclusion, it is the opinion of this Office that because the requirements of [Article III, Section 17](#) appear to have been met by Part I, Section 70 of the Appropriations Act, that section would most probably be constitutional. We would also advise that elections held pursuant to Part I, Section 70 would be subject to the Voting Rights Act of 1965, and preclearance prior to such election should be obtained from the Justice Department. Questions about preclearance may be directed to Assistant Attorney General C. Havird Jones or Ms. Kathy Belknap at 758-8667.

Sincerely,

Patricia D. Petway  
Assistant Attorney General

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