

1981 WL 157998 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 2, 1981

*1 Honorable Richard W. Riley
Governor
State of South Carolina
Post Office Box 11450
Columbia, South Carolina 29211

Dear Governor Riley:

By letter of September 30, 1981, you have requested this Office to review S.606 for constitutional weakness.

This Act reapportions the county governing body of Horry County.

South Carolina Code of Laws, 1976, Section 4-9-90 specifically authorizes that [a]ll districts shall be reapportioned as to population by the General Assembly within one year of the adoption by the State of each federal decennial census except that the General Assembly may delegate this authority to any county or group of counties.

There is presently awaiting second reading a proposed bill, S.407, which would give the power to reapportion to each county council. As this bill has not passed and as Horry County has not been delegated the power to reapportion, it would appear the General Assembly pursuant to Section 4-9-90 would be the only body with the power to reapportion the county and therefore, S.606 would be a proper enactment of the General Assembly.

This opinion as the other two previous opinions I have written to you upholding the General Assembly's power to enact reapportionment legislation for individual counties, cannot be completely free from doubt. [South Carolina Constitution, Article VIII, § 7](#); [Article III, § 34](#); [Duncan v. York County, 267 S.C. 327, 228 S.E.2d 92 \(1976\)](#); [Van Fore v. Cooke, 273 S.C. 136, 255 S.E.2d 339 \(1979\)](#); [Horry County v. Cooke, S.C., 267 S.E.2d 82 \(1980\)](#). However, only a court of competent jurisdiction could rule Section 4-9-90 to be unconstitutional; and, in lieu of such a ruling, a presumption of validity attaches to the statutory provision. [University of South Carolina v. Mehlman, 245 S.C. 180, 139 S.E.2d 771 \(1964\)](#).

These reapportionment acts are obviously specific acts for specific counties; however, it may be found by a court that they are permissible in that it would not be possible for a general law to be enacted regarding reapportionment of individual counties. Additionally, a court may find that reapportionment differs significantly from what was found objectionable by the courts in the home rule cases in that the home rule cases primarily involved changes in the form of government of the counties whereas this legislation simply reapportions the existing districts.

It is certainly not clear whether or not these reapportionment bills would be considered in a court as constitutional. However, until it is determined in a court to be otherwise, the Code provision allowing the General Assembly to reapportion the districts must be considered to be valid legislation, thereby leading to the conclusion that this act reapportioning Horry County would be a valid exercise of the power of the General Assembly.

Sincerely,

Treva G. Ashworth

Senior Assistant Attorney General

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