

1982 WL 189325 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 11, 1982

*1 The Honorable Richard W. Riley
Governor of South Carolina
Columbia, South Carolina

Dear Governor Riley:

You have requested an opinion whether H. 3963 (R-573) is constitutional and also whether this is an appropriation act for which the Governor has line item veto authority. It is the opinion of the office that this Act is unconstitutional and also that the Governor does not have line item veto authority with respect to this Act.

Sections (1) through (8) of the Act are clearly a constitutional exercise of the power of the General Assembly to provide for a system of public schools in Calhoun County. [Article XI, § 3, South Carolina Constitution](#); [Move v. Caughman](#), 265 S.C. 140, 217 S.E.2d 36 (1975); Section (9) of the Act, however, concerning the filling of a vacancy in the Office of Probate Judge for Calhoun County gives rise to several constitutional problems.

First, it appears to violate [Art. V, § 1 of the State Constitution](#) which mandates a unified judicial system. [Cort Industries Corp. v. Swirl](#), 264 S.C. 142, 213 S.E.2d 445 (1975). The probate courts are a part of the unified judicial system mandated by [Art. V. State ex rel McLeod v. Court of Probate of Colleton County](#), 266 S.C. 279, 223 S.E.2d 166 (1976). This article prohibits piecemeal legislation dealing with judges as well as courts within the unified judicial system. [State ex rel McLeod v. Civil and Criminal Court of Horry County](#), 265 S.C. 114, 116, 217 S.E.2d 23, 24 (1975). Thus this section of the Act dealing with filling a vacancy in one particular probate court most probably violates Art. V of the Constitution.

Second, however, this section of the Act also violates [Art. III, § 34\(IX\) of the Constitution](#) which prohibits a special law where a general law can be made applicable. There is in fact a general law provision which may be applicable in this case, depending on the facts relating to this particular vacancy. [§ 14-23-50, Code of Laws of South Carolina](#), 1976. But even if there were no general law which did apply, the constitutional prohibition extends to special legislation dealing with a matter that could be dealt with by general law. [Seaborn v. Hartsville Rescue Squad](#), 269 S.C. 286, 388, 237 S.E.2d 496, 698 (1977); [Thompson v. S. S. Commission on Alcohol and Drug Abuse](#), 261 S.C. 463, 472, 228 S.E.2d 768, 772 (1976). No reason appears that would prevent the matter of filling vacancies in the Office of Probate Judge to be dealt with by general law. Therefore, it is the opinion of this office that § 9 of this Act violates [Art. III, § 34\(IX\) of the Constitution](#).

Third, it appears that the act may also violate [Art. III, § 17 of the Constitution](#) which requires that 'every act . . . shall relate to but one subject.' This act provides for the levy of taxes and local appropriations relating to education and mental retardation in Calhoun County, as well as for filling a vacancy in the office of Calhoun County Probate Judge. The Supreme Court has held that a county appropriation act may properly include other provisions which relate to the fiscal affairs of the particular county. [Doran v. Robertson](#), 203 S.C. 434, 27 S.E.2d 714 (1943); [DeLoach v. Scheper](#), 188 S.C. 21, 198 S.E. 409 (1938). This section of the act does not appear to relate in any way to the fiscal affairs of Calhoun County. For this reason, the act may also violate [Art. III, § 17 of the Constitution](#) because it relates to more than one subject.

*2 In addition to asking about the constitutionality of H. 3963 (R-573) you have asked whether it is an appropriation act that gives the Governor line item veto authority. It is the opinion of this office that there is no line item veto authority with respect to this Act.

The constitutional provision authorizing the Governor to make line item vetoes is limited to '[b]ills appropriating money out of the Treasury' [Art. IV, § 21, South Carolina Constitution](#). The money appropriated by this Act is clearly not from the State Treasury but rather from the Calhoun County Treasury. Therefore, it appears that the Governor does not have authority under the Constitution to make a line item veto of this act. This result is consistent with the law in other jurisdictions having a similar constitutional provision. Those authorities hold that the Governor's line item veto authority does not extend to county appropriation acts. [Opinion of the Justices, 349 Mass. 804, 212 N.E.2d 562, 567 \(1965\)](#); see [Lawrence v. Beerman, 192 Neb. 507, 22 N.W.2d 809, 810 \(1972\)](#).

For these reasons, it is the opinion of this office that § 9 of the Act is unconstitutional and because of the apparent violation of [Art. III, § 17](#), probably the entire Act is invalid. The Governor does not have the authority to veto individual sections of the Act, but only the Act in its entirety.

Sincerely yours,

David C. Eckstrom
Assistant Attorney General

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