

1993 WL 720135 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 16, 1993

*1 Mark R. Elam, Esquire
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Office of the Governor
State House
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Dear Mark:

You have requested the opinion of this Office as to the constitutionality of R230 of 1993 which relates to the creation of the Spartanburg County Commission for Technical Education so as to modify the membership of the Commission and to change the name of the program head from President to Director. This provision appears constitutional under S.C. Const. art. VIII concerning Home Rule because public education is "not the duties of the counties, but of the General Assembly." *Moye v. Caughman*, 165 S.C. 140, 217 S.E.2d 36, 37 (1975). For reasons discussed below, this law also appears to be constitutional under art. III § 34(IX) which prohibits the enactment of a special law where a general law can be made applicable.

In considering the constitutionality of an act of the General Assembly, the presumption is that the act is constitutional in all respects. The court will not declare such an act void unless its unconstitutionality is clear beyond any reasonable doubt. *Robinson v. Richland County Council*, 293 S.C. 27, 358 S.E.2d 392 (1987). All doubts of constitutionality are generally resolved in favor of constitutionality. While this Office may comment upon potential constitutional problems, to declare an act unconstitutional is solely within the province of the courts of this State. Applying this presumption to R230 supports a conclusion that this law would most probably be found to be constitutional despite the Supreme Court's recently finding an education law unconstitutional under art. III § 34. *Horry County v. Horry County Higher Education Commission*, 306 S.C. 416, 412 S.E.2d 421 (1991).

In Horry County, the Supreme Court recognized the broad legislative power of the General Assembly in dealing with education under art. XI of the Constitution, but the court made clear that education is not exempt from special legislation restrictions of the Constitution. The court struck down legislation for the Horry County Higher Education Commission under art. III § 34 because it found that a general law could be fashioned to provide ad valorem property tax funding for all colleges and universities and that the record was "... devoid of any peculiar local conditions which require special treatment for coastal Carolina" as to those taxes; however, *Moseley v. Welch*, 209 S.C. 19, 39 S.E.2d 133, 138 (1946), recognized considerations that may allow R230 to avoid unconstitutionality under art. III § 34. The court stated that "[i]t is exceedingly doubtful whether a general law, uniform in operation throughout the state, regulating ... the extent of control which should be vested in the county boards of education, could be made applicable." Moreover, *Moseley* quoted the special referee in that case who held that the numerous special legislation provisions for the fiscal affairs of the schools and the counties of this State was "... at least indicative of a consistent legislative opinion that conditions in the various counties are such as to preclude uniformity of treatment in relation to the administration of school affairs." *Id.* According to the Court, that conclusion of the General Assembly was "entitled to much respect and in doubtful cases should be followed." *Id.*

*2 Although R230 deals with technical colleges rather than school districts and administration rather than school funding, the above language from *Moseley* appears to be applicable here in that the General Assembly has provided

separately for the area commissions for the various technical colleges which cover different geographic areas. See e.g. S.C.Code Ann. § 59-53-210, et seq. (1990) (Anderson-Oconee, Pickens); § 59-53-410, et seq. (Berkeley, Charleston, Dorchester); § 59-53-610, et seq. (Denmark); and Act No. 743, 1962 S.C. Acts 1734, as amended by Act 1141, 1968 S.C. Acts 2646 (Greenville). These separate provisions may be legislative recognition that special provisions are needed for the administration of each commission. See § 59-53-52.

The conclusion of this Office is that R230 would most probably be found to be constitutional; however, the Horry County decision does indicate that R230 carries some risk of being found unconstitutional if a court were to conclude that no peculiar local conditions required special treatment for the Spartanburg County Area Commission.

If you have any questions, please let me know.

Yours very truly,

J. Emory Smith, Jr.
Deputy Attorney General

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