

1974 WL 27658 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 4, 1974

\*1 The Honorable Robert C. Lake, Jr.  
State Senator  
Box 245  
Whitmire, South Carolina 29178

Dear Senator Lake:

You have requested the opinion of this Office as to whether H-2651, a Bill to create the office of magistrates' constable in Newberry County, is valid.

H-2651 creates the office referred to and provides how the constable shall be employed and under whose supervision he shall serve (Magistrate, District 2), and provides further that he shall serve all other magistrates in the County upon request. His salary is to be paid by the County Council, together with accouterments, and his salary is fixed at less than the amount paid a full-time deputy sheriff on the County.

It is my opinion that this proposed Bill would probably constitute valid legislation. I do not think that it would be violative of the Judicial Reform Amendment of the State Constitution (Article V), ratified April 4, 1973, which provides that there shall be created a 'unified judicial system which shall include—such other courts of uniform jurisdiction as may be provided for by general law.' The question of magistrates' constable does not relate to jurisdiction, and I am presuming that this constitutional amendment relates only to general laws relating to jurisdiction.

With respect to the Local Government Amendment (Article VIII), I similarly feel that it would most probably constitute valid legislation, but I am not as confident in this respect as with respect to the application of Article V. The prohibition contained in Article VIII, that no specific laws for any county shall be enacted, has not been construed in this context by the Supreme Court of this State. The case of Knight v. Salisbury is to be argued at the April Term of the Supreme Court and may shed some light upon the meaning to be given to the special law section of the Local Government Amendment. If the Court adopts the construction that the provisions of Article III, Section 34, must be considered in construing Article VIII, it would seem that this type of legislation would be acceptable as a case where a general law cannot be made applicable. The reason for this is the varying conditions in each of the counties. Additionally, the Constitution formerly provided that a magistrate should have the power, when authorized under the laws governing his county, to appoint such constables as may be authorized. This provision was omitted from the Judicial Article, however. The inference which I draw from this is that if the constables to be appointed in the various counties was left to the Legislature by the old Constitution, then its omission from the new Constitution would probably mean that this varying condition would warrant separate treatment for each county. The whole result is that no opinion can be expressed with any degree of confidence on a borderline question, such as this, but by best estimate is that H-2651 is probably constitutional.

With best wishes,  
Very truly yours,

\*2 Daniel R. McLeod  
Attorney General

1974 WL 27658 (S.C.A.G.)

End of Document

© 2019 Thomson Reuters. No claim to original U.S. Government Works.