

June 24, 2008

The Honorable Annette D. Young
Member, House of Representatives
410 Barfield Road
Summerville, South Carolina 29485

Dear Representative Young:

We received your letter addressed to Attorney General Henry McMaster concerning the enforceability of a Dorchester County Ordinance. Particularly, you are concerned with Ordinance 89-10 entitled "Regulation of Nuisance" and Ordinance 99-02 entitled "Littering." In your letter, you informed us that in Dorchester County "zoning is not in place county-wide." Thus, you ask us to "advise me if they apply to all areas of the county or only to the areas that are zoned."

Law/Analysis

According to article VIII, section 7 of the South Carolina Constitution (1976), the Legislature is charged with providing "for the structure, organization, powers, duties, functions, and the responsibilities of counties . . ." Section 4-9-25 of the South Carolina Code (Supp. 2007) states:

All counties of the State, in addition to the powers conferred to their specific form of government, have authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of these powers in relation to health and order in counties or respecting any subject as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order, and good government in them. The powers of a county must be liberally construed in favor of the county and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties.

We believe litter control and regulation of nuisances falls within a county's authority to enact ordinances affecting health and general welfare. Thus, we find a county's authority to enact such ordinances in section 4-9-25.

Generally, zoning involves the regulation of the use of land. See Black's Law Dictionary 1650 (8th ed. 1999) (defining a "zoning ordinance" as an "ordinance that regulates the use to which land within various districts . . ."). Article 5 of chapter 29 of title 6 of the South Carolina Code deals with local planning and zoning. Under these provisions, section 6-29-710 of the South Carolina Code (2004) pertains to zoning ordinances and the purposes for which a zoning ordinance may be enacted. This provision states:

(A) Zoning ordinances must be for the general purposes of guiding development in accordance with existing and future needs and promoting the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare. To these ends, zoning ordinances must be made with reasonable consideration of the following purposes, where applicable:

(1) to provide for adequate light, air, and open space;

(2) to prevent the overcrowding of land, to avoid undue concentration of population, and to lessen congestion in the streets;

(3) to facilitate the creation of a convenient, attractive, and harmonious community;

(4) to protect and preserve scenic, historic, or ecologically sensitive areas;

(5) to regulate the density and distribution of populations and the uses of buildings, structures and land for trade, industry, residence, recreation, agriculture, forestry, conservation, airports and approaches thereto, water supply, sanitation, protection against floods, public activities, and other purposes;

(6) to facilitate the adequate provision or availability of transportation, police and fire protection, water, sewage, schools, parks, and other recreational facilities, affordable housing, disaster evacuation, and other public services and requirements. "Other public requirements" which the local governing body intends to address by a particular ordinance or action must be specified in the preamble or some other part of the ordinance or action;

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(7) to secure safety from fire, flood, and other dangers; and

(8) to further the public welfare in any other regard specified
by a local governing body.

While ordinances regulating litter and controlling nuisances may further the purposes of zoning, we do not believe such ordinances constitute zoning ordinances. In our review of the ordinances in question, we believe they regulate the behavior of individuals, rather than regulating land. Thus, we believe such ordinances are simply an exercise of the Dorchester County's (the "County's") general police powers, rather than an act of zoning. Furthermore, it is our understanding in speaking with the County's attorney that these ordinances were passed as stand alone ordinances, not as part of the County's zoning ordinances. Therefore, we are of the opinion that both the nuisance ordinance and the littering ordinance are general ordinances applicable and enforceable county-wide.

Very truly yours,

Henry McMaster
Attorney General

By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General