

1981 S.C. Op. Atty. Gen. 82 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-56, 1981 WL 96582

Office of the Attorney General

State of South Carolina

Opinion No. 81-56

June 16, 1981

***1 SUBJECT: Zoning Ordinances; Authority of SCDHPT to remove trees; Conflict between local and state authority.**

Any local ordinance which prohibits the removal of trees by the SCDHPT pursuant to its authority to construct or maintain State highways could be in violation of the Constitution and law of this State.

TO: Research Assistant
General Committee, S. C.
Senate

QUESTION:

Whether ordinances passed by local authorities concerning tree protection could legally prohibit the SCDHPT from implementing its plans with respect to road work within the jurisdiction of those local governments if the plans require the removal of trees?

OPINION:

The South Carolina Department of Highways and Public Transportation is authorized to construct and maintain highways within the State of South Carolina. The courts have held that the Department has the responsibility of maintaining those highways in a reasonably safe condition and to protect motorists travelling on the state highway system from hazardous or unsafe conditions. The South Carolina Supreme Court has determined that zoning ordinances passed by local governments which conflict with a state agency's authority are void. [Low vs. City of Spartanburg, 148 S.C. 299, 146 S.E. 12 \(1928\)](#); [Colyer vs. Thomas, 268 S.C. 455, 234 S.E.2d 862 \(1977\)](#). In [Low](#), the City of Spartanburg attempted to prevent the State Hospital authority from building a tuberculosis hospital within the city, which the hospital authority was required by State law to build. The court stated that 'that which the State authorizes, directs, requires, licenses or expressly permits, a municipality is powerless to prohibit.'

Additionally, the [South Carolina Constitution at Article 8, Section 14](#), states that when local governments are 'enacting law provisions applicable to the following matters shall not be set aside; . . . (6) the structure and the administration of any government service or function, responsibility for which rests with the State government or which requires statewide uniformity.' It is the opinion of this office that any local ordinance which prohibits the removal of trees by the South Carolina Department of Highways and Public Transportation pursuant to its authority to construct or maintain state highways would be in violation of the Constitution and law of this State.

Richard D. Bybee
Assistant Attorney General

1981 S.C. Op. Atty. Gen. 82 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-56, 1981 WL 96582