

1981 S.C. Op. Atty. Gen. 83 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-57, 1981 WL 96583

Office of the Attorney General

State of South Carolina

Opinion No. 81-57

June 17, 1981

***1 SUBJECT: CONSTITUTIONS—Due Process—Impairment of Contracts LANDLORD AND TENANT—Property, Real**

A waiting period of 180 days to protect tenants of structures being converted into condominiums does not unconstitutionally impair the obligations of contracts or deprive the owner of his property without due process of law.

TO: Senator Hyman Rubin

DISCUSSION:

You have requested our opinion as to whether provisions of Senate Bill 289 which grant certain rights to tenants of structures being converted into condominiums unconstitutionally impair the obligations of contracts or deprive the owner of his property without due process of law. The proposed legislation would amend [Section 27-31-10 et seq. CODE OF LAWS OF SOUTH CAROLINA \(1976\)](#), commonly cited as the Horizontal Property Act, by setting out specific procedures and responsibilities of the property owner who seeks to convert existing rental property into condominium ownership. That part of the proposed legislation which has given rise to your inquiry states in part as follows:

Tenant shall not be required to vacate the apartment until expiration of his lease or for one hundred eighty days following delivery of the notice, whichever is longer, and the terms of the tenancy shall not be altered during that one hundred eighty day period.

As a popular means of home ownership, the concept of condominium ownership has taken hold only in relatively recent years. 15A AM.JUR. 2d 'Condominiums, Etc.' § 7 at 835. At the present time, all fifty states have legislation enabling condominium ownership. See generally, U.S. Department of Housing and Urban Development (HUD), [The Conversion of Rental Housing to Condominiums and Cooperatives](#), Appendix 2 (1980). State regulation of this area of real property ownership does not appear to have ever been successfully challenged.

Many state regulatory schemes governing condominium ownership establish certain restrictions and limitations on the property owner who is seeking to convert an existing building into a condominium. HUD, [The Conversion of Rental Housing to Condominiums and Cooperatives](#) supra. Currently, there are wide differences between the restrictions and limitations prescribed by the various state laws. However, the National Conference of Commissioners on Uniform State Laws has approved and recommended for enactment, as part of the Uniform Condominium Act, a statute which would regulate the conversion of buildings occupied by tenants into condominiums. 7 UNIFORM LAWS ANNOTATED 'Uniform Condominium Act' § 4-110. It is upon this model that the proposed section set out above is based.

From review of that section of Senate Bill 289 about which you have inquired, it is the conclusion of this office that the proposed legislation is not constitutionally flawed as either impairing the obligation of contracts or as depriving the owner of his property without due process of law. This conclusion is based upon our opinion that the enactment of a regulatory scheme governing the condominium conversion is a valid and proper exercise of the police power of the State.

*2 Further, the limited restrictions placed on the property owner who is seeking to convert to condominium ownership does not constitute a 'taking' of property within the meaning of the state and federal constitutional prohibitions against the taking of property without due process of law.

The constitutional prohibitions against impairment of the obligation of contracts do not prevent contracts from being subject to legislation enacted by the State in the proper exercise of its police power. The state may in the proper exercise of its police power enact regulations reasonably necessary to secure the health, safety, morals, comfort, or general welfare of the community, even though contracts may be affected thereby, as such matters cannot be placed by contract beyond the power of the state to regulate and control them. 16 C.J.S. 'Constitutional Law' § 281 at 1284. Statutes and municipal ordinances calculated to better the health, safety and welfare of the people have long been recognized by our courts to be within such police power. [Richards v. City of Columbia](#), 227 S.C. 538, 88 S.E.2d 683 (1955). In recognizing the police powers of the state and the limitations thereon, the United States Supreme Court has said:

The states must possess broad power to adopt general regulatory measures without being concerned that private contracts will be impaired, or even destroyed, as a result.

Legislation adjusting the rights and responsibilities of contracting parties must be upon reasonable conditions and of a character appropriate to the public purpose justifying its adoption. [United States Trust Co. v. New Jersey](#), 431 U.S. 1, 52 L.Ed.2d 92, 97 S.Ct. 1505 (1977).

The Supreme Court of South Carolina has likewise recognized that contract rights are subject to the police powers of the State. [Richards, supra](#), at 691. Such powers, however, may be exercised only for the protection of the public in its health, safety, morals or general welfare. See generally, [Guynette v. Myers](#), 237 S.C. 17, 115 S.E.2d 673 (1960).

If condominium conversions create problems such as causing shortages of rental housing, displacing tenants from long established homes and adding to the cost of housing, the General Assembly will indeed have a reasonable basis for the exercise of its police powers for the general welfare of the citizens of this State. If such a reasonable basis for regulation is found by the Legislature to exist, the proposed legislation should survive any constitutional challenge which may be based upon the impairment of contracts provisions of the State and Federal Constitutions.

As to the question of depriving the property owner of his property without due process of law, there is no set formula by which to determine where governmental action in the form of regulation ends and a taking of property begins. [Goldblatt v. Hempstead](#), 369 U.S. 590, 8 L.Ed.2d 130, 82 S.Ct. 987 (1962). See also, Mich. Law Review 78:124, [The Validity of Ordinances Limiting Condominium Conversion](#), at 132. However, the courts appear hesitant to find any unconstitutional taking of property if the owner is not deprived of all reasonable use of the property. E.g., [Penn Central Transportation Co. v. New York City](#), 438 U.S. 104, 57 L.Ed.2d 631, 98 S.Ct. 2646 (1978).

*3 Under provision of the proposed legislation, there would be no physical encroachment by the State upon the property of the owner seeking to convert his building into a condominium. Further, there would be no interference by the State in the existing use of the property. Accordingly, the owner would continue during the conversion period to obtain profit from his tenants in the manner and form as before. Finally, the owner's right to convert a building into a condominium would not be frustrated but simply delayed. Every restriction or limitation that may be placed upon property cannot be considered as a taking of the property. [Penn Central Transp. Co. v. City of New York, supra](#). Likewise, there is no unconstitutional taking simply because a property owner is deprived of the most beneficial or profitable use of his property. [Goldblatt v. Hempstead, supra](#). The proposed legislation appears to be reasonable in scope and minimal in impact upon the value of the property. Accordingly, there appears to be no taking of the property in violation of either the State or Federal Constitutions. The same conclusion was reached by the Supreme Court of Massachusetts when it reviewed a local ordinance similar in effect to Senate Bill 289. See, [Grace v. Town of Brookline](#), 379 Mass. 43, 399 N.E.2d 1038 (1979).

Sincerely,

Daniel R. McLeod
Attorney General

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