1976 WL 30447 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
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***1** City or town cannot abate a private nuisance.

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QUESTION:

Can the Town of Williston prohibit as a public nuisance the performing repairs on large tractor-trailer trucks and the running of the motors of the refrigeration systems on the trucks by a service station?

AUTHORITIES CITED:

56 AM.Jur.2d Municipal Corporations § 443 (1971);

Section 47-66, 1962 S.C. Code of Laws;

Section 47-37, 1962 S.C. Code of Laws (as amended);

66 C.J.S. Nuisances § 2 (1950);

66 C.J.S. Nuisances § 81 (1950);

State v. Turner, 198 S.C. 487, 18 S.E.2d 372 (1942);

Morrison v. Rawlinson, 193 S.C. 25, 7 S.E.2d 635 (1940);

Bowlin v. George, 239 S.C. 429, 123 S.E.2d 528 (1962);

Winget v. Winn-Dixie Stores, Inc., 242 S.C. 152, 130 S.E.2d 363 (1963);

Strong v. Winn-Dixie Stores, Inc., 240 S.C. 244, 125 S.E.2d 628 (1962);

Young, et al. v. Brown, 212 S.C. 156, 46 S.E.2d 673 (1948).

DISCUSSION:

As a general rule, a state legislature may delegate to municipal corporations the power to declare what shall constitute nuisances and the power to abate them within the corporate boundaries. 56 Am.Jur.2d Municipal Corporations § 443

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(1971). In South Carolina the power to abate nuisances is bestowed upon a municipality by virtue of Section 47-66 of the 1962 Code of Laws of South Carolina which states as follows:
Any city or town council may abate and remove nuisances within the limits of such city or town.

If in fact the ordinance of the Town of Williston has adopted under this provision, then the town has authority to abate public nuisances. Section 47-66 was repealed with the passage of new legislation in 1975, however, the ordinance of the Town of Williston is valid if adopted prior to this repeal. The power to abate nuisances is granted under § 47-37 of the new statutes, but it should be noted that ordinances will not be valid under these provisions until the form of government and election procedures are approved by the United States Justice Department.

It is clear that 'the State may, through its duly authorized agent or official, proceed in equity in behalf of the people to abate a public nuisance, but not to abate a private nuisance'. 66 C.J.S. Nuisances § 2 (1950). Therefore, although the Town of Williston does have the power to abate nuisances, it must be determined if the situation they are seeking to remove or abate is a public nuisance or a private nuisance. If it is the latter then clearly a person injured in his private rights can maintain any action to abate such a nuisance. 66 C.J.S. Nuisances § 81 (1950).
The distinction between public and private nuisances lies in the difference of the rights affected thereby. A nuisance is public because of the danger or injury to the public. It is private only because the individual, as distinguished from the public, has been or may be injured . . ..

***2** It is the public annoyance and not the number of people annoyed by it, that constitutes a public nuisance . . .. Inconvenience or annoyance to the public is an essential element without which there is no public or common nuisance. A source of damage to a single private house is not a public nuisance, even if similar damage is inflicted on others in different places, the damage not being common or public. 66 C.J.S. Nuisances § 2 (1950).

Further,
The difference between a public nuisance and a private nuisance does not consist in any difference in the nature or character of the thing itself. It is public because of the danger to the public. It is private only because the individual as distinguished from the public has been or may be injured . . .. No doubt a nuisance is public if it affects the entire community or neighborhood, or any considerable number of persons. Furthermore, it undoubtedly is true that a nuisance is a public one if it occurs in a public place, or where the public frequently congregate, or where numbers of the public are likely to come within the range of its influence; . . .. State v. Turner, 198 S.C. 487, 496, 18 S.E.2d 372 (1942); See Morrison v. Rawlinson, 193 S.C. 25, 7 S.E.2d 635 (1940).

As the facts are stated in the case at hand, at most two residents who lived in the vicinity of the service station have complained of the performance of services on large tractor-trailer trucks and have also complained about the noise of the refrigeration systems on some of the trucks. Due to the nature of these grievances, it would seem that the alleged nuisance would be purely private in nature as it in no way affects the community at large or a substantial number of residents. In Bowlin v. George, 239 S.C. 429, 434, 123 S.E.2d 528 (1962), which was an action by a private residence owner to recover damages for the maintenance of an adjacent automobile wrecking yard, it was stated:
. . . [T]hat an injury to private property, or to the health and comfort of an individual, is in its nature special and peculiar, and does not cause a damage which can properly be said to be common or public . . ..

Therefore, on the basis of the above-mentioned facts, it would seem that the described nuisance could be characterized as one of a private nature.

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Although it appears that the nuisance here is in fact a private one, it is not conclusive since a question of nuisance is one of degree depending upon the circumstances and each such question must be resolved in light of the facts and circumstances of the particular case. Winget v. Winn-Dixie Stores, Inc., 242 S.C. 152, 130 S.E.2d 363 (1963); Strong v. Winn-Dixie Stores, Inc., 240 S.C. 244, 125 S.E.2d 628 (1962); Young, et al. v. Brown, 212 S.C. 156, 46 S.E.2d 673 (1948). Thus, a conclusive determination upon the matter could only be rendered by a Court of proper jurisdiction.

CONCLUSION:

Based upon the limited facts as set forth within, it is the opinion of this Office that the Town of Williston cannot prohibit as a public nuisance the performing of repairs on large tractor-trailer trucks and the running of the motors of the refrigeration systems of the trucks.

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