

1972 S.C. Op. Atty. Gen. 139 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3318, 1972 WL 20457

Office of the Attorney General

State of South Carolina

Opinion No. 3318

May 25, 1972

***1 RE: The use of mobile homes can not be absolutely prohibited by a municipality.**

TO: Mayor

Town of Kershaw

Your letter of recent date requests that this office render an opinion on the constitutionality of an ordinance passed by the Town of Kershaw which states that 'it shall be unlawful to place, set up, or use any type of mobile home within the incorporate limits of the Town of Kershaw.' It is the opinion of this office that the ordinance in question is unreasonable and arbitrary exercise of the police powers and, therefore, unconstitutional.

The police powers of a municipality are not absolute. They are restricted by the constitutional right to 'due process' as set forth in the Constitution of this State and the Constitution of the United States. This constitutional provision prevents a city from passing ordinances which unreasonably and arbitrarily interfere with the legal use and enjoyment of private property. *Henderson v. City of Greenwood*, 172 S.C. 6 (1934), [Rogers-Kent, Inc. v. General Electric Co.](#), 231 S.C. 636 (1957). The police regulation can only be constitutional when 'it is reasonably necessary in the interests of the public order, health, safety, morals or general welfare.' *Rogers-Kent, Inc. v. General Electric Co.*, *supra* at 645. In addition, it must be necessary under all existing circumstances. [McCoy v. Town of York](#), 193 S.C. 390 (1940).

The absolute prohibition against the use of mobile homes anywhere within the town limits of Kershaw can not be a reasonable exercise of the police powers under all circumstances that exist.

The courts that have confronted the issue have held that such a prohibition is an unreasonable restraint on property rights and can not be justified on the grounds of health, morals, safety or general welfare of the community. Annot. [96 A.L.R. 2d 232 \(1964\)](#). It is inconceivable that the use of mobile homes under all circumstances endangers the health, morals, safety or general welfare of the citizens of Kershaw.

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