The State of South Carolina

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The Honorable Joyce C. Hearn
Member, South Carolina House of Representatives
503-B Blatt Building
Columbia, South Carolina 29211

Dear Representative Hearn:

You have asked that this Office review a proposed Richland County ordinance introduced on December 16, 1986, that, among other things, provides for the licensing and regulation of sexually oriented businesses. Your specific concern is whether Richland County may require licenses and charge license fees for those businesses defined as sexually oriented although the county does not require all businesses that operate in the county to purchase business licenses. You have raised additional questions related to specific requirements of the licensing ordinance; however, because of the time constraint for answering the first inquiry we have separately prepared this response for you limited to the first inquiry. Although there exists some doubt as will be explained later, we believe, that Richland County may enact a license ordinance directed at the regulation of a specific industry, such as the adult entertainment industry, without concomitantly imposing a similar licensing requirement on all businesses operating within the county.

The ordinance in question provides, among other things, for the licensing of businesses defined as sexually oriented businesses operating in Richland County. The ordinance is premised upon detailed factual findings by the local governing body including findings of a specific need for supervision and regulation of such establishments because of health concerns and concerns that these businesses often times augment criminal activity and have a deleterious effect on surrounding neighborhoods and the community. The ordinance provides for a licensing fee of $500. Again, I emphasize that this opinion does not address the validity of the specific licensing requirements in the ordinance.

Generally, courts distinguish between licensing ordinances enacted in order to raise revenue and those enacted for regulatory purposes. 51 Am.Jur.2d Licenses and Permits, § 89; also, Southern Fruit Co. v. Porter, 188 S.C. 422, 199 S.E. 537 (1938). The proposed Richland County ordinance is correctly characterized as a regulatory provision, instead of a revenue raising provision, since it expressly provides for the regulation and supervision of sexually oriented businesses by zoning, inspection and supervision. 51 Am.Jur.2d, supra at § 89. The requirement of an annual license fee does not alter the nature of the regulation here, since the fee simply represents an attempt by the county to secure reimbursement for the necessary labor and expenses in administering the regulatory program and the ordinance does not purport to create a special tax to provide additional revenue for the county. See, e.g., State v. Life Insurance Company of Georgia, 254 S.C. 286, 175 S.E.2d 203 (1970); Southern Fruit Co. v. Porter, supra.

Clearly the State, or the General Assembly, has the power "to delegate to municipal corporations [including counties] authority to levy and collect license charges, for either revenue or regulation..." 51 Am.Jur.2d, supra, at § 88. This Office has previously concluded that counties possess general police power and may enact ordinances to further the public health safety or welfare. 1984 Op.Atty.Gen. No. 66 (June 11, 1984); see, also, § 4-9-30 South Carolina Code of Laws 1976 (1986 Cum.Supp.); Duncan v. York County, 267 S.C. 327, 228 S.C.2d 92 (1976). We caution, however, that any conclusions in this area are not certain since there exists no explicit statutory provision delegating police power to counties as compared to § 5-7-30, the provision that expressly grants police power to municipalities. 1984 Op.Atty.Gen., supra. Moreover, there is no South Carolina decisional law clearly concluding that counties have general police powers. However, in a recent decision the South Carolina Supreme Court apparently assumed in its review of a Darlington County ordinance regulating fireworks that counties possess general police powers. See, Terpin v. Darlington County Council, _____ S.C. _____, 332 S.E.2d 771 (1985).

Assuming that the county possesses general police power, and we believe that it does, the grant of such authority "carries with it the implied power to license as a means of regulation." Southern Fruit Co. v. Porter, 199 S.E. at 539. Of course, any regulatory ordinance enacted pursuant to a county's police power must tend to promote the safety, health, or general welfare of the public. Id., at 539; 51 Am.Jur.2d, supra at § 101. On the other hand the statutory provisions that require license taxes for revenue purposes[1] to be uniform are inapplicable to

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[1] See, § 4-9-30(12); Southern Bell Telephone and Telegraph Company v. City of Aiken, 279 S.C. 269, 306 S.E.2d 20 (1983); 1977 Op.Atty.Gen. No. 345.

license fees enacted pursuant to a municipal corporation's police power. State v. Reeves, 112 S.C. 383, 99 S.E. 841 (1919). Further, a municipal corporation may regulate by licensing such occupations as the need arises without obligating itself to impose similar licensing restrictions upon other occupations. 51 Am.Jur.2d, supra at § 103.

Specifically, with regard to the licensing of businesses that engage in sexually oriented entertainment, the Courts have generally recognized and upheld the authority to license such business by local governments in order to control the deleterious secondary effects of such business on the surrounding community. See, City of Renton v. Playtime Theatres, Inc., _____ U.S. _____, 106 S.Ct. _____, 89 L.Ed.2d 29 (1986); Young v. American Mini Theatres, Inc., 427 U.S. 50, 96 S.Ct. 2440 49 L.Ed.2d 310 (1976); Airport Book Store, Inc. v. Jackson, 248 S.E.2d 623 (Ga., 1978); Genusa v. City of Peoria, 619 F.2d 1203 (7th Cir., 1980). The licensing regulations must however be sensitive to the First Amendment considerations inherent in such businesses and any regulation must be tailored such that it serves "a substantial governmental interest and allows for reasonable alternative avenues of communication. "City of Renton v. Playtime Theatres, Inc., 89 L.Ed.2d at 39. While we cannot, in the issuance of our opinion weigh or determine facts, I note that the factual recitals in the ordinance would likely support local government licensing of the sexual entertainment industry.

Thus, in conclusion, I advise that Richland County is probably authorized pursuant to its general police power to enact a licensing ordinance regulating sexually oriented businesses without providing generally for the regulation and licensing of all other businesses in the county.[2] I emphasize that this opinion does not address the validity of the specific requirements of the proposed ordinance.

Very truly yours,

Edwin E. Evans
Deputy Attorney General

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[2] The ordinance proposes a license fee of $500 per annum. Ordinarily, regulatory fees set by local government may be not exceed in any appreciable degree the sum that will be required to reimburse the municipal corporation for the labor and expense in the supervision, regulation and licensing of the regulated industry. 51 Am.Jur.2d supra at § 114; State v. Reeves, supra; Bayside Enterprises, Inc. v. Carson, 470 F.Supp. 1140 (M.D., Fla., 1979).