

The State of South Carolina



Office of the Attorney General

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March 25, 1987

The Honorable George H. Bailey
Member, House of Representatives
100 Metts Street
St. George, South Carolina 29477

Dear Representative Bailey:

You have asked whether a county council may adopt an ordinance, emergency or otherwise, to restrict transportation through the county, or to prevent disposal within landfills in the county, of hazardous waste materials. Due to the large number of court decisions which have invalidated state or local regulation of hazardous waste transportation or disposal, on the basis of the Supremacy Clause (Article IV, clause 2) and the Commerce Clause (Article I, Section 8) of the United States Constitution since numerous federal statutes are involved, it is unlikely that a court would uphold such a county ordinance. Enclosed are copies of City of New York v. United States Department of Transportation, 715 F.2d 732 (2d Cir. 1983); Washington State Building and Construction Trades Council v. Spellman, 684 F.2d 627 (9th Cir. 1982); and City of Philadelphia v. State of New Jersey, 437 U.S. 617, 98 S.Ct. 2531, 57 L.Ed.2d 475 (1978), decisions which discuss the federal preemption of state or local action.

You indicated that the waste materials to be transported in this instance would originate from within this State and would be transported solely within this State's boundaries. Please be advised that in some instances situations in which transportation does not cross a state's boundaries but remains solely intrastate may still be regulated by Congress under the Commerce Clause if interstate commerce is affected. Hodel v. Virginia Surface Mining and Reclamation Association, Inc., 452 U.S. 264, 101 S.Ct. 2352, 69 L.Ed.2d 1 (1981); Pacific Telephone & Telegraph Co. v. Tax Commission of State of Washington, 297 U.S. 403, 56 S.Ct. 522 (1936). Due to the strenuous federal regulation of transportation and disposal of hazardous waste materials and the numerous preemption decisions, a court faced with the issue could well determine that the Commerce Clause would be triggered in this instance.

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This Office has previously examined a Dorchester County ordinance, which purported to prohibit the importation and disposition of solid waste generated without the county, by an opinion dated June 21, 1978. The opinion considered the effect of state laws concerning hazardous waste management upon the ordinance and concluded that the ordinance would be invalid insofar as it conflicted with state law. A copy of the opinion and Opinion No. 4520 cited within the opinion are enclosed herewith. The ordinance under consideration at present should be examined in light of the June 21, 1978 opinion and the state law cited therein to determine potential conflicts with and preemption by state law, in addition to federal law.

With kindest regards, I am

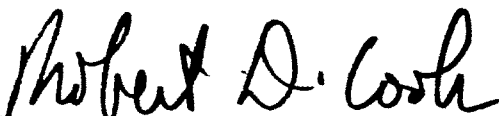
Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/rhm

Enclosures

REVIEWED AND APPROVED BY:



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