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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON  
ATTORNEY GENERAL

September 30, 2002

The Honorable Lonnie Hosey  
Member, House of Representatives  
P.O. Box 423  
Barnwell, South Carolina 29812

**Re: Allendale County Landfill Ordinances**

Dear Representative Hosey:

In a letter to this Office, you asked that we review a request for an opinion from a citizen of Allendale County. The request concerns the application of certain ordinances related to the collection and disposal of solid waste in Allendale County. The thrust of the citizen's concern appears to be that the existing ordinances are not being complied with by the County despite the fact that formal procedures to amend or repeal the ordinances have not been completed. To the extent possible, I will attempt to address the aforementioned issue.

First, it must be noted that the ultimate resolution of the issue raised involves a factual determination. As we have previously opined, "[b]ecause this Office does not have the authority of a court or other fact-finding body, we are not able to adjudicate or investigate factual questions. See OPS. ATTY. GEN. DATED OCTOBER 9, 1985 & SEPTEMBER 3, 1999. Thus, this opinion amounts only to an analysis of the laws that may be applicable to the situation.

S.C. Code Ann. §4-9-120 provides in pertinent part that "[county] ... council[s] shall take legislative action by ordinance which may be introduced by any member ... ." Section 4-9-120 also provides that "... [w]ith the exception of emergency ordinances, all ordinances shall be read at three public meetings of council on three separate days with an interval of not less than seven days between the second and third readings..." Any ordinance enacted by a county council has the same local force and effect as a state statute. See OP. ATTY. GEN. DATED APRIL 28, 1998. Once a county council passes a valid ordinance, they are bound to operate according to its provisions. See OP. ATTY. GEN. DATED NOVEMBER 28, 2000 (county council cannot violate its own ordinance in expanding number of members on parks and recreation commission); and OP. ATTY. GEN. DATED MARCH 8, 1988 (action of council in bypassing duly-adopted ordinance will be deemed void). See also Springville Citizens for a Better Community v. City of Springville, 979 P.2d 332 (Utah 1999)(City is not entitled to disregard its mandatory ordinances).

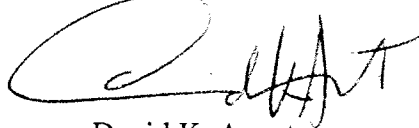
*Request Letter*

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Moreover, repealing or amending an existing ordinance would also be considered a "legislative action." In order for an ordinance to be properly amended or repealed, a new ordinance must be passed. Simpkins v. City of Gaffney, 315 S.C. 26, 431 S.E.2d 592 (Ct. App. 1993); Lominick v. City of Aiken, 244 S.C. 32, 135 S.E.2d 305 (1964). Accordingly, in repealing an ordinance, county councils must follow the procedures outlined in Section 4-9-120. That is, the ordinance must "... be read at three public meetings of council on three separate days with an interval of not less than seven days between the second and third readings..." Until and unless this procedure is followed, the repeal of an ordinance cannot be accomplished and the ordinance in question would remain in effect.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Avant", written over a horizontal line.

David K. Avant  
Assistant Attorney General

DKA/an