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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

August 24, 2000

The Honorable Robert W. Hayes, Jr.
Senator, District No. 15
P.O. Box 904
Rock Hill, South Carolina 29731

RE: Informal Opinion

Dear Senator Hayes,

By your letter of April 18, 2000, you have requested an opinion of the Attorney General's Office on the validity of a proposed municipal ordinance. Specifically you ask if a city can charge a landlord a fee for the removal tenant property that has been lawfully removed from the landlord's premises.

South Carolina Code of Laws Section 27-40-710 provides remedies for the landlord upon a tenant's noncompliance with the rental agreement. Subsection (D), added in a 1992 amendment and specifically providing and for the landlord's removal of the tenant's personal property, reads in pertinent part:

> Personal property belonging to a tenant removed from a premises as a result of an eviction proceeding under this chapter which is placed on a public street or highway shall be removed by the appropriate municipal or county officials after a period of forty-eight hours, excluding Saturdays, Sundays, and holidays, and may also be removed by these officials in the normal course of debris or trash collection before or after a period of forty-eight hours. If the premises is located in a municipality or county that does not collect trash or debris from the public highways, then after a period of forty-eight hours, the landlord may remove the personal property from the premises and dispose of it in the manner that trash or debris is normally disposed of in such municipalities or counties.

Significantly, a 1999 amendment substituted "shall" for "may" in the first sentence and added the second sentence. See S.C. Code Ann. § 27-40-710 History.

A number of basic principles of statutory interpretation are relevant to your inquiry. First and foremost, is the long-recognized tenet that in interpreting a statute, the primary purpose is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). The statute's words must be given their plain and ordinary meaning without resort to subtle or forced construction either to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). Moreover, it will be presumed that the General Assembly did not intend to do a futile thing. Gaffney v. Mallory, 186 S.C. 337, 195 S.E. 840 (1938), and thus, where terms of a statute are positive and unambiguous, exceptions not made by the Legislature cannot be read in by implication. Vernon v. Harleysville Mut. Cas. Co., 244 S.C. 152, 135 S.E.2d 841 (1964).

Generally, the regulation of the collection and disposal of trash is within the police power of the municipality, see 7 McQuillin Municipal Corporations § 24.242, and a municipality ordinarily may charge fees in the form of taxes for such a service service. See Op. Atty. Gen. No. 4036 (June 17, 1975). However, because a State statute appears to addresses this situation, the city may be precluded from enacting the ordinance if it is contrary to the statute's provisions. S.C. Code Ann. §27-40-710 imposes a duty on the municipality to remove the tenant's from the street property if the city has normal trash collection procedures in place. The 1999 amendment specifically changing "may " to "shall" in this sentence implies that the General Assembly intended to require municipalities to perform this service, even in the absence of any fee agreement with the landlord. Read in its entirety, the commanding language of the statute coupled with the lack of any express authorization of the city officials to charge for the removal suggests that the proposed city ordinance would place an additional burden on landlords prohibited by State law. For all of the forgoing and in light of the above rules of statutory construction, it is the opinion of this Office that a proposed city ordinance in which the landlord is charged a fee for the removal of the tenant's put out personal property would probably undermine, and possibly contradict, S. C. Code Ann. § 27-40-710. Be advised, however, that in the same way a statute enacted by the General Assembly is entitled to a presumption of correctness, an ordinance adopted pursuant to a municipality's police power is presumed valid. See Op. Atty. Gen. Dec. 21, 1998. Because the statute does not expressly prohibit charging the landlord, it could be construed as allowing municipalities to enact the ordinance. Some consideration might be given to filing a declaratory judgment action to resolve your question with absolute finality.

This letter is an informal opinion only. It has been written by a designated Senior 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 not officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General