



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

February 9, 2000

Sheryl Schelin, Esquire
Horry County Staff Attorney
Post Office Box 1236
Conway, South Carolina 29526

RE: Informal Opinion

Dear Ms. Schelin:

By your letter of January 7, 2000, you have asked the opinion of this Office on whether the State Ethics Act preempts Horry County from adopting a procurement code ordinance containing rules of conduct provisions that differ in severity from those found in the state law.

We start with the proposition that political subdivisions are not free to adopt ordinances that are inconsistent with or repugnant to the Constitution or general laws of the State. In order to preempt an entire field, however, a state law must make manifest a legislative intent that no other enactment may touch upon the subject in any way. Town of Hilton Head Island v. Fine Liquors, Ltd., 302 S.C. 550, 397 S.E.2d 662 (1990). Clearly, the State Ethics Act does not preempt political subdivisions from enacting procurement ordinances. In fact, S.C. Code Ann. §11-35-50 requires that "[a]ll political subdivisions of the State shall adopt ordinances or procedures embodying sound principles of appropriately competitive procurement no later than July 1, 1983." Thus, "[w]here an ordinance is not preempted by state law, the ordinance is valid if there is no conflict with state law." Wrenn Bail Bond Service, Inc. v. City of Hanahan, 335 S.C. 26, 515 S.E.2d 521 (1999). This same standard was enunciated by the Court in Hospitality Assoc. v. Town of Hilton Head, 320 S.C. 219, 464 S.E.2d 113 (1995). There, the Court said the following:

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[d]etermining if a local ordinance is valid is essentially a two-step process. The first step is to ascertain whether the county or municipality that enacted the ordinance had the power to do so. If no such power existed, the ordinance is invalid and the inquiry ends. However, if the local government had the power to enact the ordinance, the next step is to ascertain whether the ordinance is inconsistent with the Constitution or general law of this State

Based on the information you have provided, the model code contains standards of conduct that are inconsistent with the State Ethics Act's provisions regarding government procurement matters. Accordingly, in those instances where the model code's standards are different from those in the State Ethics Act, state law must control. Indeed, even the State Procurement Code excludes from its penalties provisions those matters which fall under the jurisdiction of the State Ethics Commission. South Carolina Code Ann. §11-35-1240 provides in relevant part, "[t]he board shall prescribe administrative penalties for violation of the provisions of this code and of regulations promulgated thereunder, *excluding those matters under the jurisdiction of the Ethics Commission as provided by law*. (Emphasis added). Therefore, it is my opinion that the State Ethics Act's provisions regarding procurement matters must prevail over inconsistent provisions adopted pursuant to a county procurement ordinance.

I trust this information is responsive to your inquiry and that you will not hesitate to contact me if I can be of additional assistance. This letter is an informal opinion only. It has been written by a designated Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

Sincerely yours,



Zeb C. Williams, III
Deputy Attorney General

ZCW/an