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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

November 15, 2000

Tom Lynn, Public Works Director
Mauldin Public Works
P.O. Box 249
Mauldin, South Carolina 29662-0249

RE: Informal Opinion

Dear Mr. Lynn:

By your letter of October 25, 2000, you have requested an opinion of this Office concerning the removal of garbage by the City of Mauldin. By way of background you inform us of the following information: The city's trash collection service excludes service to multifamily complexes consisting of nine or more units. In light of the city's policy, a group of condominium owners, who pay the same ad valorem tax rate as single family residents, rent a dumpster to provide private trash collection for their complex. The condominium owners have asked the city to reconsider its policy. Specifically you now ask whether the city can continue to exclude multifamily complexes from the city's garbage collection service.

If challenged in court, the condominium owners' most probable argument against the city's decision to exclude multifamily dwellings from garbage collection service is that the ordinance violates their equal protection rights. The South Carolina Supreme Court has delineated the requirements necessary to satisfy those rights:

> Equal protection requires that "all persons be treated alike under like circumstances and conditions, both in privileges conferred and liabilities imposed."... If a classification is reasonably related to a proper legislative purpose and the members of each class are treated equally, any challenge under the equal protection clause fails. Equal protection is satisfied if: (1) the classification bears a reasonable relation to the legislative purpose; (2) the members of the class are treated alike under similar circumstances; and (3) the classification rests on some reasonable basis. "The fact that the classification may result in some inequity does not render it unconstitutional."...

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Request Letter

Skyscraper Corp. v. County of Newberry, 323 S.C. 412, 417, 475 S.E.2d 764,766 (1996) (citations omitted). Furthermore, the city's ordinance is "a legislative enactment and is presumed to be constitutional." Bibco Corp. v. City of Sumter, 332 S.C. 45, 504 S.E.2d 112, 116(1998). The party challenging the ordinance must prove its unconstitutionality beyond a reasonable doubt. Id. In determining whether the ordinance violates the condominium owners equal protection rights, the court will give great deference to the legislative classification. See Skyscraper, 323 S.C. at 417, 475 S.E.2d at 766.

Although we have not been provided with the entire ordinance concerning solid waste disposal in the City of Mauldin, we will assume the purpose of the ordinance is to provide for an orderly method of garbage collection within the city's jurisdiction. The validity of the ordinance appears to turn upon the reasonableness of the classification that differentiates multifamily dwellings of nine units or more from multifamily dwellings of less than nine units and single family dwellings. South Carolina case law has not directly addressed this question. Some ordinances concerning solid waste fees have been challenged on equal protection grounds. For example, in Skyscraper Corp. v. County of Newberry, 323 S.C. 412, 475 S.E.2d 764(1996), the Court upheld a differential classification in which multi-tenant property owners were required to pay the solid waste fees of their tenants with unrecorded leases, but tenants with recorded leases were billed directly by the county. The facts in Skyscraper, however, are largely distinguishable from the present situation in which the classification is based on the number of the dwelling units in the multifamily dwelling.

Other jurisdictions have decided more analogous situations, with differing results. The Appellate Court of Illinois held that a mobile home park could be excluded from garbage collection service in the city's contract with a private removal service. See Mount Prospect State Bank v. Village of Kirkland, 467 N.E.2d 1142 (1984). The court said that the more demanding needs of the multiple tenants in the mobile home park, as well as the greater amount of refuse generated by them, justified the disparate treatment. See id. The court also commented that the commercial nature of the property, with 70 to 77 mobile homes, also served as a rational basis for the classification. See id. On the other hand, the Superior Court of New Jersey struck down an ordinance which declared that domestic waste in multiple dwellings of more than four units was commercial waste, and therefore not entitled to collection. See Lincoln Associates v. City of Orange Township, 581 A.2d 1364 (1990). Although the court recognized that fiscal costs and administrative constraints alone could furnish a legitimate basis for a municipal decision, the distinction between commercially owned three unit complexes, which would receive service, and commercially owned five unit complexes, which would not, could treat persons situated alike differently. See id.

The circumstances in the City of Mauldin fall somewhere in between the two cases described above. Mauldin can be distinguished from the Kirkland case, in which the contract was upheld, because the ordinance excludes dwellings with as few as nine units, far from the 70-77 mobile homes which indicated the commercial nature of the property. On the other hand, Mauldin's ordinance is

more inclusive than that in Lincoln Associates, which only provided service to complexes with up to four dwelling units. Mauldin's ordinance appears more similar to the latter case, but admittedly this is an unsettled area of law in South Carolina. Certainly the ordinance raises some of the same issues addressed in these cases and may require additional information. For example, you have expressed concerns about the considerable costs of servicing the multifamily dwellings. However, would the costs of servicing the same number of single family residences be less expensive? You have also expressed concern about possible damage to personal property as the service vehicles maneuver through a complex's narrow streets. On the other hand, could the potential damage be avoided by providing curbside service only where the complex adjoins a city street?

In sum, the Mauldin ordinance is entitled to a presumption of validity and the challenger faces a heavy burden to prove otherwise, but the validity of the ordinance is not entirely free from doubt. Whether a reasonable basis exists for the classification involves numerous questions of facts which are beyond the scope of an opinion of this Office to address. Only a court could make such a determination. Although we have expressed our concerns about the constitutionality of the ordinance, you may wish to seek a declaratory judgment to resolve the issue with finality.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy 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 nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General