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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

August 10, 1995

Thomas J. Thompson, Esquire
City Attorney, City of Laurens
Post Office Box 215
Laurens, South Carolina 29360

RE: Informal Opinion

Dear Mr. Thompson:

You have advised that the City of Laurens has historically provided trash and waste pickup and also disposal of the same. The City utilizes uniform trash containers for residential use and also provides various trash dumpsters for commercial and/or business establishments depending on their needs. The resident and/or business is required to purchase the trash receptacle from the City and also pay fees in connection with the use of the same on an annual basis.

You have further advised that over the last several years, outside firms have been contracting with the commercial segment within the municipal limits to handle the providing of trash receptacles and also to dispose of their waste; apparently the cost to deal with these outside firms is substantially less than the fees and/or taxes imposed by the City of Laurens. As a result of the foregoing, the City of Laurens is losing substantial revenues each year and is operating at a deficit due to the fact that the City has a rather large investment in waste pickup equipment and also a number of people employed for the purpose of handling the trash and waste disposal situation.

On the basis of the foregoing, you have asked whether it would be legal for the City to adopt an ordinance which would preclude the private sector from handling any aspect of trash and/or waste pickup and disposal, and therefore require all residents and/or businesses within the municipal limits of the City of Laurens to deal with the City's sanitation department.

By an opinion of this Office dated June 28, 1974, it was concluded that residents of a county may not be required to use the solid waste collection service which would provide door-to-door collection service for which a service charge would be levied. A copy of this opinion is enclosed. The author of the opinion cites to portions of the well-known treatise, McQuillin on Municipal Corporations.

Additional research shows that there are apparently two approaches to the issue. One is represented by 7 McQuillin, Municipal Corporations, §24.242, which observes that "an ordinance prohibiting any person, firm, or corporation other than the city waste removal department from collecting or removing garbage on a commercial basis for hire may be invalid as bearing no reasonable relation to the purpose and objects of the municipality." A copy of the entire section, with cites, is enclosed herewith, as is a copy of Parker v. Provo City Corporation, 543 P.2d 769 (Utah 1975), from which that point was made in McQuillin.[1] The court declared that the defect in the ordinance in question was that it did not bear a reasonable relation to its purposes. The court stated:

> Here, a muted claim is made that this is a health measure. However, the record discloses more concern for the convenience and economics of the waste disposal department than for the promotion of the public health. Indeed, there is no showing that the material collected or the method of hauling is, in any way, detrimental to the public health.
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> By its prohibition of a legitimate endeavor, which is not shown to bear a reasonable relation to the public health, defendant [city] cannot, under its power to protect the public health, invade a private property right.

Parker v. Provo City Corporation, 543 P.2d at 770.

On the other hand, there is a substantial body of law represented by §24.250 of McQuillin on Municipal Corporations. In part that section provides:

> Municipal corporations frequently perform the service of collecting and removing all garbage, trash, and similar substances, and prohibit any other persons from engaging in that business. A municipality may do this

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[1]The court in Parker v. Provo City Corporation, supra, seems to rely heavily on Dillon's Rule to reach the conclusion that the city had no authority to enact the ordinance in question. It is observed that Dillon's Rule as applied to municipalities was abolished in Williams v. Town of Hilton Head Island, ___ S.C. ___, 429 S.E.2d 802 (1993), a copy of which is enclosed.

> under its police or general power to provide for the health of its inhabitants and to prevent and abate nuisances. ...

A copy of the entire section with citations is enclosed, as are copies of several judicial decisions which relate to a municipality's reservation of collection of garbage or trash exclusively to itself. In addition, enclosed are portions of Annot., 83 A.L.R.2d 799, §§4 and 5, as to attacks on an exclusive license as a monopoly or franchise and the exclusion of private services; you will see therein the types of attacks that are usually made on ordinances such as you envision, as well as the merits of such attacks.

Whether such an ordinance would withstand scrutiny in the courts of this State is uncertain, as the courts have not given sufficient guidance on the issue as yet. Moreover, no ordinance has been presented to this Office for review, so that there is no way to compare such an ordinance to those which have withstood judicial scrutiny. Of concern is the Parker v. Provo City Corporation decision which focused on economics of that city's waste disposal department, as your letter (as stated in the facts recited above) pointed out that the City of Laurens is losing substantial revenues each year and is operating at a deficit due to the investment in waste pickup equipment and employees.

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 questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General

Enclosures