



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

August 14, 1996

The Honorable Becky Meacham
Member, House of Representatives
2161 Windy Oaks Drive
Fort Mill, South Carolina 29715

RE: Informal Opinion

Dear Representative Meacham:

By your letter of June 26, 1996, to Attorney General Condon, you have sought an opinion as to whether York County's proposed manufactured housing ordinance is constitutional. You had enclosed a copy of the proposed ordinance for our review.

The proposed ordinance enclosed with your letter indicates that the York County Council finds that the Zoning and Development Standards Ordinance of York County should be amended in the proposed particulars "to provide for a more orderly administration of the ordinance and to promote and provide for the health, safety and welfare of York County and its citizens." Section 1 of the Ordinance. The York County Zoning and Development Standards Ordinance is then to be amended in many respects relative to manufactured housing, including lot requirements, permitted uses, buffers, special exceptions for manufactured home parks, campgrounds, bed and breakfast inns, scenic overlay districts, roads and streets, and other particulars. I understand that a constituent is concerned about that part of the proposed ordinance which would establish setup standards for single family residential dwellings.

The pertinent part of the ordinance would create section 10.16 of Article X, General and Supplemental Regulations, to provide the following:

Section 10.16 SETUP STANDARDS FOR SINGLE FAMILY
RESIDENTIAL DWELLINGS

- (10.16.1) PURPOSE. The purpose of these regulations is to unify and clarify setup standards for all single family dwellings.
- (10.16.2) DEVELOPMENT STANDARDS. All single family homes shall meet the following setup standards:
- (1) If a manufactured home--then the structure must be 1976 or newer HUD approved at construction and if it is a used structure, the seller must provide an affidavit of safety in the following areas: mechanical, plumbing, structural and electrical.
 - (2) If a manufactured home--then the structure must be setup in accordance with South Carolina Uniform Standards Code for Manufactured Housing or in accordance to the manufacturer specifications, whichever is stricter.
 - (3) All single family residential structures must be underpinned with permanent brick, block, stucco, stone, or masonry veneer (brick, stone, etc). Underpinning shall be vented in accordance with the York County Building Code. If underpinning is to be brick masonry veneer and higher than 36" at any point, then it must be framed in such a manner as to assure permanency. Exceptions to the above are:
 - (a) Manufactured homes in recognized manufactured home parks which may use manufactured home kits
 - and -
 - (b) Homes placed in the floodplain shall meet the floodplain ordinance requirements.
 - (4) All single family structures shall have all entrances complete in accordance with York County Code prior to the issuance of the Certificate of Occupancy.

Apparently your constituent's concern is that late model manufactured homes would be banned, that such could not be moved to a new manufactured housing park, that he would be restricted to only moving the home to another portion of the same property. That

The Honorable Becky Meacham
Page 3
August 14, 1996

being the case, the constituent would be concerned that the county is infringing on his rights.

Presumption of Constitutionality

An ordinance, as a legislative act, is subject to the same presumptions of constitutionality as would be an act of the General Assembly. In considering the constitutionality of a legislative act, it is presumed that the act is constitutional in all respects. Moreover, such a legislative act will not be considered void unless its unconstitutionality is clear beyond any reasonable doubt. Thomas v. Macklen, 186 S.C. 290, 195 S.E. 539 (1937); Townsend v. Richland County, 190 S.C. 270, 2 S.E.2d 777 (1939). All doubts of constitutionality are generally resolved in favor of constitutionality. While this Office may comment upon potential constitutional problems where such are identified, it is solely within the province of the courts of this State to declare an act unconstitutional.

Background

Regulation of manufactured housing construction, sales, and the like is governed by both state and federal laws and, to a lesser extent due to preemption, by local political subdivisions. The concern of Congress is evidenced by its enactment of the National Manufactured Housing Construction and Safety Standards Act of 1974, codified at 42 U.S.C. §5401 *et seq.* Congress' declaration of its purpose in enacting the Act is specified in 42 U.S.C. §5401:

The Congress declares that the purposes of this chapter are to reduce the number of personal injuries and deaths and the amount of insurance costs and property damage resulting from manufactured homes. Therefore, the Congress determines that it is necessary to establish Federal construction and safety standards for manufactured homes and to authorize manufactured home safety research and development.

Pursuant to authority granted within the Act, the United States Department of Housing and Urban Development has adopted regulations concerning manufactured home construction and safety standards, 24 C.F.R. §3280; manufactured home procedural and enforcement regulations, 24 C.F.R. §3282; Manufactured Home Consumer Manual requirements, 24 C.F.R. §3283; and perhaps other regulations. These regulations and statutes cover manufactured homes manufactured on or after June 15, 1976.

The Honorable Becky Meacham
Page 6
August 14, 1996

consumer must certify in writing to the retail dealer that the manufactured home meets the applicable zoning requirements applicable to the property on which the home is to be installed [.]

....

Manufactured home minimum installation requirements are found in R19-425.39; the scope and applicability of this regulation are outlined in paragraph (A), which provides:

These regulations cover the installation of manufactured homes, wherever located in this State. The provisions of this regulation are intended to apply to manufactured homes (single section, multiple section, or expandable types) for use as single-family dwellings. These regulations are intended to apply to all manufactured home set-ups, and shall not be construed as relieving the installer of a manufactured home of responsibility for compliance with the manufacturer's installation instructions, but shall preempt any existing local standard (See paragraph G).²

There does not appear to be a conflict or overlap between the provisions of the proposed York County ordinance being considered herein and the regulations concerning manufactured housing, such that the preemption issue would be involved.

Constitutional Concerns

The power to enact zoning ordinances has been granted to the counties and municipalities by the General Assembly. Thus, York County Council is acting pursuant to statute if it should adopt the proposed ordinance. Generally speaking, statutes granting zoning powers to counties and municipalities are usually upheld as valid or constitutional. 101A C.J.S. Zoning §8. The power of the legislature to adopt such enabling legislation is usually derived from a constitutional provision or the police power of the state; in South

²Paragraph G then provides:

In areas where a community meets the eligibility requirements for the National Flood Insurance Program, the local jurisdiction having authority shall have the authority to change, delete or modify these regulations in order to comply with the National Flood Insurance Program created by the National Flood Insurance Act of 1968, as amended. A copy of any different standard adopted under this paragraph shall be filed with the South Carolina Manufactured Housing Board.

The Honorable Becky Meacham
Page 7
August 14, 1996

Carolina it is the latter. Rush v. City of Greenville, 246 S.C. 268, 143 S.E.2d 527 (1965). With respect to such an exercise of police power, the following has been stated:

Broadly speaking, planning and zoning laws or regulations are based on, or constitute and application or exercise of, the police power to enact laws for the safety, health, morals, convenience, comfort, prosperity, or general welfare of the people, and they have been said to be authorized only such power. In other words, zoning laws and regulations find, or must find, their justification in some aspect of the police power asserted for the public welfare or in the public interest, or must be justified by the fact that they have some tendency to promote the public health, morals or welfare. As otherwise expressed, they must have a direct, substantial, or reasonable relation to the above enumerated subjects, or to the police power.

101A C.J.S. Zoning §9. Thus, the proposed ordinance would be required to have some direct, substantial, or reasonable relation to the police power to be valid.

The Fourteenth Amendment, United States Constitution, in section 1, provides that no state shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." It is well settled that the Fourteenth Amendment does not interfere with the proper exercise of the police power of the several states. As stated long ago in Railroad Commission v. Southern Railway Co., 127 S.C. 15, 120 S.E. 561 (1924),

A police regulation, obviously intended as such, and not operating unreasonably beyond the occasions of its enactment, is not rendered invalid by the fact that it may affect incidentally the exercise of some right guaranteed by the Constitution; as, for example, it is said that the exercise of the police power is not subject to restraint by constitutional provisions designed for the general protection of rights of individual life, liberty, and property. While there are no precise limits to the police power, it is not, however, without its limitations, since it may not unreasonably invade private rights, or violate those rights which are guaranteed under either Federal or State Constitutions.***

The Fourteenth Amendment to the Constitution of the United States does not interfere with the proper exercise of the police power of the several States. Accordingly the provisions of this Amendment prohibiting any State from depriving any person of life, liberty, or property without due process of law do not operate as a limitation upon the police power of the State to

The Honorable Becky Meacham
Page 8
August 14, 1996

pass and enforce such laws as in its judgment, will inure to the health, morals, and general welfare of the people.

Id., 127 S.C. at 20. It is equally well settled that such regulations must not be unjust or arbitrary. In Ford v. Atlantic Coast Line R. Co., 169 S.C. 41, 168 S.E. 143 (1932), the Supreme Court stated:

While the police power of the states left to them and not directly restrained by the Federal Constitution ... is incapable of exact definition ..., and cannot be aliened or abridged by them by contract or otherwise ..., yet it has been often held that the Fourteenth Amendment to the Federal Constitution does not operate as a limitation upon the states in the authorized exercise of this power to enact and enforce such laws as in their judgment will protect the health, morals, safety, and general welfare of the public ..., where such laws or regulations are not palpably arbitrary, unjust, or unreasonable and do not unjustly or unreasonably impair private constitutional rights. ...

Id., 169 S.C. at 91-92 (citations omitted).

A leading treatise on municipal corporations has commented on the police power of municipalities generally and as to zoning in particular. In 6A McQuillin, Municipal Corporations, §24.22, the rights of citizens to hold and use their property is examined; it is stated:

[T]he privilege of every citizen to use his property according to his own will is both a liberty and a property right, but these rights are always subordinate to the interests of the public welfare. Thus, an enactment which deprives a citizen of his liberty or property rights cannot be sustained under the police power unless a due regard for the public health, safety, comfort, or welfare requires it.

....

It follows from the fact that property is subject to the incidental effect on it of police regulation that a due and proper exercise of the police power cannot be defeated merely because property rights are incidentally benefited, invaded, impaired, destroyed, or taken without compensation. Nor does prevention of a use of property by an exercise of the police power per se involve an unconstitutional or compensable deprivation of property. ...

The Honorable Becky Meacham
Page 9
August 14, 1996

Then, as to zoning, the treatise contains the following in Volume 8, §25.05, as to constitutionality and validity of zoning ordinances generally:

Generally, reasonable zoning, especially where it is comprehensive, is constitutional and valid as a proper exercise of the police power. In other words, a zoning ordinance does not violate due process when it bears some reasonable relation to the legitimate objectives of the police power. ...

....

Zoning ordinances are presumed to be reasonable, valid and constitutional; the burden of proof to the contrary is on one asserting it, and their unreasonableness, invalidity or unconstitutionality must be clear before they will be set aside by the courts. Generally, whether or not a zoning ordinance is valid and constitutional will depend upon a reasonable balancing of public interest in zoning as against opposing private interests in property. ...

Discussion

The proposed ordinance contains legislative findings in section 1, as observed previously; York County Council is stating at the outset its concern for the promotion and provision of health, safety, and welfare concerns of York County and its citizens. Further indications of the purpose of the proposed ordinance are found in section 2 of the proposed ordinance, which would amend section 5.21 of the ordinance already in place; as to the purposes the proposed ordinance would provide:

RUD:

This district is intended to protect and preserve areas of the county which are presently rural in character and use. This district is to serve to discourage rapid growth while allowing growth through orderly use and timely transition of rural areas.

RUD-I:

This district is intended to protect and preserve the rural character of an area by allowing growth which is not as rapid yet requiring larger lots (1 acre) thus maintaining a rural character within areas developed. This district should be utilized wherever development pressure is increasing but public water and sewer are not readily available.

The Honorable Becky Meacham
Page 10
August 14, 1996

It is apparent that another purpose of the proposed ordinance is to control growth while preserving the rural character of those specified areas of the county. Examination of the ordinance shows that various provisions therein apply to manufactured housing parks and others to manufactured housing to be used as single family residential dwellings. Throughout the proposed ordinance, whether with respect to manufactured housing parks or single family residential dwellings, consideration of health, safety, and general welfare concerns are evidenced. Recognition of the health and safety concerns addressed by the state and federal governments with respect to manufactured housing is also evidenced in the proposed ordinance.

The proposed ordinance, if enacted, would be entitled to the presumptions of constitutionality discussed above. The proposed ordinance does not appear to be unconstitutional on its face. Given the potential hazards associated with manufactured housing as identified in the state and federal legislation, and further given the authority of York County pursuant to the police power to adopt zoning ordinances and regulate manufactured housing as such pertains to zoning, it cannot be said that the proposed ordinance is an unreasonable exercise of the police power or that the proposed ordinance is unconstitutional. It is possible that a circumstance could exist so that the proposed ordinance, if enacted, would be found to be unconstitutional as applied in that particular circumstance; however, identification of such circumstances would be beyond the scope of an opinion of this Office. I am of the opinion that the ordinance, if enacted, would most probably be found to be constitutional if challenged in a court; in any event, unless and until a court should declare the ordinance to be unconstitutional, it would be entitled to the presumptions of constitutionality and therefore to be enforced.

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