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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

October 28, 1997

Richard T. Runnels, Deputy Director
South Carolina Department of Archives and History
Post Office Box 11,669
Columbia, South Carolina 29211

Re: Informal Opinion

Dear Mr. Runnels:

Your opinion request has been forwarded to me for reply. You request an opinion regarding Section 4-9-195 of the South Carolina Code of Laws. This Section sets forth the authority of counties and municipalities to grant special property tax assessments to rehabilitated historic properties and low and moderate income rental properties. The question is whether all properties meeting the requirements of 4-9-195(B)(5) automatically qualify for the special tax assessment or if a local governing body is permitted to change these requirements by ordinance. You mention that the agency feels that they may restrict the assessments to properties rehabilitated after passage of the local ordinance, but the wording of the statute leaves some doubt.

Section 4-9-195(B) sets forth the requirements which must be met in order for a "Rehabilitated historic property" to be eligible for certification as such. One of these requirements is that the "rehabilitation was commenced on the property after January 1, 1987, and the rehabilitation was not commenced or undertaken as a result of a natural disaster, catastrophe, accident, or force majeure." S.C. Code Ann. § 4-9-195(B)(5).

It is well settled that a municipal ordinance cannot conflict with the Constitution and the general law of this State. See Connor v. Town of Hilton Head Island, 314 S.C. 251, 442 S.E.2d 608 (1994); S.C. Code Ann. § 5-7-30; 56 Am.Jur.2d Municipal Corporations § 374. Here, the General Assembly has passed a general State statute authorizing these special tax assessments and defining those properties which are eligible

Request Letter

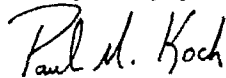
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for certification as a "Rehabilitated historic property." One of these requirements is that the rehabilitation was commenced after January 1, 1987. If a local governing body attempted to redefine this requirement by ordinance stating that the rehabilitation must occur at a date other than January 1, 1987, such redefinition would conflict with the State statute setting forth eligibility requirements. Therefore, in my opinion, if a court were to address this issue, a court would likely determine that the ordinance would be in conflict with general State law and find the ordinance invalid.

This letter is an informal opinion only. It has been written by a designated 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 remain

Very truly yours,



Paul M. Koch

Assistant Attorney General