05-3953 -Lit

The State of South Carolina

Office of the Attorney General

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February 27, 1990

The Honorable Richard M. Quinn, Jr.
Member, House of Representatives
323-A Blatt Building
Columbia, South Carolina 29211

Dear Representative Quinn:

Following up on our opinion to you dated February 8, 1990, concerning the proposed "Clean Indoor Air Act," you have sent a copy of the proposed bill and have raised several more questions about preemption of local governments' further regulation of smoking in public places.

I would first emphasize that, obviously, the proposed Act is primarily a policy consideration for the General Assembly, as is any ordinance which county council has before it. Our role in any opinion is simply to point out any legal problems to you, rather than express a particular view as to any such policy considerations.

At the outset, it is noted that the proposed bill provided to this Office appears to be general in form. On the second page but not incorporated in the body of the bill is a proposed preemption clause; your questions will be now considered. 1/

First: If the bill is adopted in its present form, with the proposed preemption clause, you have asked whether counties and municipalities would be barred from enacting and/or enforcing stricter ordinances, such as an outright ban on smoking in government-owned buildings within their boundaries, or ordinances to regulate smoking in the private sector. The proposed preemption clause expressly provides: "This act expressly pre-empts the regulation of smoking by all government entities and subdivisions including boards and commissions to the extent that regulation is more restrictive than state law."

1/ Enclosed is a copy of an opinion of this Office dated June 28, 1989, which discusses the law relative to the power of a county or municipality to adopt a more restrictive ordinance on a matter covered by general law which does not contain an express preemption clause.

The preemption clause speaks for itself. With the preemption clause as proposed, the plain language of the clause would appear to preclude the adoption of an ordinance, by a county or municipality, more restrictive than state law. In construing a statute it is the primary objective of the courts and this Office to ascertain and effectuate legislative intent if at all possible. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). One way to ascertain intent is to review the language used in the statute. Where, as here, the language of the statute is clear and unambiguous, the courts will interpret such statute literally. State v. Goolsby, 278 S.C. 52, 292 S.E.2d 180 (1982). Thus, the preemption clause would be interpreted literally.

Second: Under the provisions of the State Constitution and existing statutes, you have asked whether the legislature could preempt a local government's authority to enact or enforce such stricter standards. This question was addressed in the opinion of February 8, 1990, particularly in the discussion of constitutional and statutory provisions; to summarize, political subdivisions have only those powers granted to them by the Constitution or statutes, or those powers necessarily implied therefrom. Political subdivisions may not vary from the provisions of general law unless such variance is specifically authorized. In the context of your proposed bill, this would mean that the legislature could, if it wished, preempt further regulation in the same matter by local political subdivisions.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosure

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions