

The State of South Carolina

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March 2, 1989

The Honorable Michael T. Rose
Senator, District No. 38
606 Gressette Building
Columbia, South Carolina 29202

Dear Senator Rose:

Thank you for your letter dated February 19, 1989. In response to your three questions, I would advise as follows. First, we will be happy to provide you a copy of a letter from Arthur Rosenblum requesting the opinion as to the validity of the ordinance enacted by Dorchester County on January 31, 1989. As a matter of courtesy and in accord with our usual procedure, we have contacted Mr. Rosenblum and he has no objection to your receiving a copy of this letter. The same is herein enclosed along with a copy of the ordinance.

As to your second question, I am enclosing a copy of our office policy concerning the issuance of opinions. While this Office tries to limit the number of opinion requests from local governments because of time and lack of resources, we do have a systematic policy wherein an opinion may be issued to a local government provided that the policy is followed. And, of course, where a prior opinion governs a specific situation, we are happy to provide a response to local governments. In this instance, since prior opinions appeared to govern the situation, we responded by letter from Senior Assistant Attorney General Ken Woodington dated February 10, 1989. In addition, pursuant to our policy, we sought by telephone the legal views of the county attorney who requested the opinion on behalf of county council.

With respect to your third question, we stand behind the validity of Mr. Woodington's response in this situation. While it is true that there exist certain statutes authorizing counties to take action with respect to solid waste and other materials, it is clear that at least one of the opinions which Mr. Woodington relied upon dated June 21, 1978 took into account the existence of statutory

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authority concerning county powers in this area, but concluded nevertheless that the State Hazardous Waste Management Act preempted or superseded the county's authority with respect to the regulation or prohibition of solid waste. The June 21, 1978 opinion specifically concluded that the Dorchester ordinance in question forbade what state law expressly permits. Likewise, as stated in the February 10, 1989 letter, we concluded that Dorchester County was preempted by state law because "a court would most probably hold that a county may not prohibit an act which the State, through DHEC, has permitted pursuant to comprehensive statewide legislation." In essence, the February 10 letter was based on the presumption that DHEC could conceivably grant a permit to a facility in Dorchester County and yet that facility could not operate because Dorchester County had denied that same facility a permit. Thus in accord with the general law of preemption stated in the 1978 opinion relied upon in our February 10 letter, the fact that an ordinance might be regulatory as opposed to prohibitive would not be controlling.

I would also note that the comprehensive Hazardous Waste Management Act was enacted subsequent to either Sections 44-55-1210 or 44-55-1010. The fact that the two statutes which you reference were enacted prior to the enactment of the Hazardous Waste Management Act is supportive of the conclusion reached in the February 10, 1989 letter.

I hope this adequately responds to the questions you have raised. If we can be of further assistance, please do not hesitate to let us know. With kind personal regards.


Sincerely,


Charles H. Richardson
Assistant Attorney General

CHR/an

Enclosures

REVIEWED AND APPROVED BY:


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