The State of South Carolina

Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-734-3970

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The Honorable Paul E. Short, Jr.
Member, House of Representatives
309-A Blatt Building
Columbia, South Carolina 29211

Dear Representative Short:

By your letter of April 6, 1988, you have asked that this Office examine a proposed ordinance for Chester County purporting to regulate unfit dwellings, unclean lots, and junked automobiles and advise as to its constitutionality. As our policy concerning local governmental matters requires, we have received input from the Chester County Attorney about the proposed ordinance; one particular concern is whether Chester County has the authority to regulate unclean lots and junked automobiles.

This Office has repeatedly advised that the constitutionality of an act of the General Assembly is presumed in all respects; the same presumption would be applicable to a county ordinance, as a legislative act. Such an enactment will not be considered void unless its unconstitutionality is clear beyond any reasonable doubt. Cf., 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, it is solely within the province of the courts of this State to declare such an enactment unconstitutional.

Unfit Dwellings

The first part of the proposed ordinance provides for the demolition of dwellings or other structures which are unfit for human habitation or use for various reasons. The specific authorization for a county to adopt such an ordinance is found in

Section 31-15-310 et seq., Code of Laws of South Carolina (1976). A comparison of section 5 of the proposed ordinance with Section 31-15-330(4) of the Code reveals some irregularities with the language of the ordinance which may be typographical in nature and easily corrected. Otherwise, the ordinance appears to comport with the statutes. Due process appears to have been accorded by virtue of provisions for notice of the county's proposed actions and for an opportunity for persons so affected to be heard.

One concern which should be considered is whether the ordinance, as enforced, may amount to a taking of property without compensation. In some cases such as Horton v. Gulledge, 227 N.C. 353, 177 S.E.2d 885 (1970), the demolition of an unfit dwelling by a city without compensating the owner, having found that costs of repair would be sixty percent of the value of the dwelling, and then placing a lien on the property without giving the owner a reasonable opportunity to make the dwelling habitable, was deemed to be a taking of property without compensation. There are other cases, however, which have held otherwise; enclosed is Annot., 43 A.L.R.3d 916, which discusses both sides of the issue. While our courts have not yet given sufficient guidance on this issue, the potential problem is pointed out for your consideration.

The County Attorney expressed an interest in making this portion of the proposed ordinance applicable only to residential areas of the county. Conceivably, unfit dwellings or buildings could be found in any area of a county and, arguably, would be unsafe or unsanitary regardless of their location. To avoid an equal protection problem, since all such dwellings or buildings could be considered similarly situated, a rational basis for treating residential areas differently should be established in the ordinance. As long as a rational basis fairly and reasonably related to the objective of the ordinance can be established, such a classification (residential versus non-residential) would most probably pass constitutional muster. Eslinger v. Thomas, 476 F.2d 225 (4th Cir. 1973).

Enclosed is a copy of a letter dated November 5, 1985, from Chief Deputy Attorney General Joe L. Allen, Jr., to a county auditor concerning the collection of a lien for costs incurred in repairing housing pursuant to Section 31-15-30 et seq. of the Code. Such a lien was not felt to be collectable in the same manner as property taxes but would instead be enforceable through judicial action.

Unclean Lots

Part II of the proposed ordinance requires that vacant lots be kept free of grass, trash, garbage, or other such matter, to keep the property from becoming a health hazard or a nuisance. The county supervisor would be given enforcement authority. If, after notice, the property owner fails to clean up the lot, the county supervisor may cause the lot to be cleaned, at a reasonable cost, which cost will become a lien on the property. Said lien is proposed to be collected as property tax, the amount having been added to the property tax levied against the property.

This Office has concluded that the counties of this State may exercise police powers. Op. Atty. Gen. No. 84-66, dated June 11, 1984. Health, public safety, and sanitation are among the functions of a county, listed in Section 4-9-30(5), which may be regulated by a county. Abatement of a nuisance which affects public health or safety is generally deemed to be within the police power of a political subdivision. 6A McQuillin, Municipal Corporations, § 24.63. See also McQuillin, §§ 24.90 (weed nuisance ordinances sustained as valid) and 24.92.50 (ordinances requiring owners to maintain private property free of litter valid). Thus, abating a nuisance, such as an unclean lot which poses a health or safety hazard, could very well be deemed a proper county function authorized by Section 4-9-30(5).

The collection of costs for cleaning the lot would not be appropriate if added to and collected with property taxes. See letter from Chief Deputy Attorney General Joe Allen dated November 5, 1985 on this point.

Junked or Abandoned Vehicles

As noted with respect to unclean lots, junked or abandoned vehicles could conceivably constitute a health or safety hazard, particularly if, as the proposed ordinance finds, the vehicle is or becomes a breeding place for flies, mosquitoes, or rats. If, after notice, the owner of such a vehicle fails to prove that the vehicle can move under its own power, the county supervisor can cause the vehicle to be moved, at reasonable cost, with the cost being added to and collected with annual vehicle taxes.

Such an ordinance is, as noted above, most probably permissible under Section 4-9-30(5), as a regulation of public safety, health, or sanitation functions. Such would again be encompassed within the police power of the given county. Again,

collection of the lien would be by judicial process rather than as an addition to annual vehicle taxes; see letter of Chief Deputy Attorney Joe Allen dated November 5, 1985.

In conclusion, the proposed ordinance would be entitled to the presumption of constitutionality. Regulation of these subjects would be appropriate county functions under Section 4-9-30(5) of the Code and police power generally. Collection of the liens so imposed would be by judicial action rather than as an adjunct to collection of taxes. As to the section pertaining to unfit dwellings, the fact that some courts have deemed unconstitutional ordinances which do not afford the owner a reasonable time to bring the dwelling or building into compliance with building codes should be considered, in the event that, in the future, the courts of this State adopt such a position.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP:sds

Enclosures

REVIEWED AND APPROVED BY:

ROBERT D. COOK
EXECUTIVE ASSISTANT FOR OPINIONS