

1984 S.C. Op. Atty. Gen. 175 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-67, 1984 WL 159874

Office of the Attorney General

State of South Carolina

Opinion No. 84-67

June 12, 1984

*1 Henry Summerall, Jr., Esquire
Summerall & Bailey, P.A.
Post Office Box 2376
Aiken, South Carolina 29801

Dear Mr. Summerall:

Mr. Medlock has referred your recent letter to me for reply. You have stated that the City of Aiken is considering adoption of a Landscaping and Tree Ordinance. You have further stated that in 1975, Harry Burchstead wrote an opinion stating that a similar tree ordinance would probably be unconstitutional. You have inquired if that is still the opinion of this Office.

As you have pointed out, laws do change and this area of the law appears to have changed significantly since the time of Mr. Burchstead's opinion in 1975. Apparently, Mr. Burchstead's opinion that aesthetic considerations alone would not authorize these ordinances which was the majority view in 1975 now represents the minority view in this area. [State v. Jones](#), 290 S.E. 2d 675, 679 (1982); [McQuillin on Municipal Law](#), § 25.31.

There apparently are no South Carolina cases on this question. However, the standard appears to be a balancing test of the "diminution in value of an individual's property and the corresponding gain to the public." [Cite omitted]. [State v. Jones](#), *supra*, at 679. And, any ordinance passed would have a strong presumption of validity. See [People v. Berlen](#), 307 N.Y. Supp. 2d 96 (1970); [City of Darlington v. Stanley](#), 239 S.C. 139, 122 S.E. 2d 207 (1961).

Therefore, although Mr. Burchstead's opinion is not clearly erroneous, it appears his opinion now represents the minority viewpoint and that a municipality would now most probably have the authority to draft an ordinance based on aesthetic considerations.

Sincerely,

Treva G. Ashworth
Senior Assistant Attorney General

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