

1981 WL 157963 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 14, 1981

*1 John H. Tiencken, Jr., Esquire
Dennis, Dennis & Watson
Post Office Drawer 1174
Moncks Corner, South Carolina 29461

Dear Mr. Tiencken:

In response to your request for opinions regarding certain aspects of a proposed Berkeley County ordinance establishing a solid waste system, I can advise you as follows:

1. In my opinion, the Berkeley County Council is authorized to grant an exclusive franchise to a solid waste collector. [Section 4-9-30\(5\), CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended, authorizes county councils to make appropriations for solid waste collection and disposal and [Section 4-9-30\(11\)](#) authorizes county councils to grant franchises in unincorporated areas 'in the manner provided by law for municipalities and subject to the same limitations, to provide for the orderly control of services and utilities affected with the public interest.' [Sections 44-55-1010 et seq., CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended, authorize county councils to regulate garbage collection and disposal and Section 44-55-1040 authorizes county councils to issue collection and disposal franchises 'to one or more persons.' I think that the use of the phrase 'one or more' is sufficiently express statutory authority to grant a franchise which is exclusive. See generally, 12 McQUILLIN MUNICIPAL CORPORATIONS §§ 34.08 and 34.23; 56 AM.JUR.2d Municipal Corporations, Counties and Other Political Subdivisions § 46]. I would especially refer you to 7 McQUILLIN MUNICIPAL CORPORATIONS § 24.251 and 56 AM.JUR.2d Municipal Corporations, Counties and Other Political Subdivisions § 462 for their discussions regarding the grant of an exclusive permit or license instead of a franchise in order to avoid any question of an illegal restraint of trade. In fact, [Section 44-55-1030 of the Code](#) speaks of a 'license' to collect or dispose of garbage. See also, [§ 44-55-1210, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended (collection and disposal of solid waste 'by contract' with private agencies).

2. In the absence of a statutory definition of 'garbage,' I think that 'garbage' can be interpreted to include all ordinary forms of household waste, to wit:

Where [a statute] makes no attempt to define the word 'garbage,' it should be given its ordinary meaning—the meaning given the word by recognized lexicographers. 56 AM.JUR.2d Municipal Corporations, Counties and Other Political Subdivisions § 458 at 508.

Webster's Third New International Dictionary (1976 edition at 935) defines 'garbage' as 'refuse of any kind: waste.' See also, 18 WORDS AND PHRASES 'Garbage' beginning at 116 ('garbage' is defined as waste of any kind,' [Kibiuk v. Windsor Residences](#), 52 N.Y.S.2d 326 at 331).

3. In my opinion, a municipality which provides garbage collection services outside its corporate limits would not be subject to the proposed Berkeley County ordinances so that it would not be precluded from serving a franchised area if it were not the holder of the franchise. This conclusion results from the language of [Section 4-9-30\(11\) of the Code](#) that a county council's authority to grant franchises does not apply to 'utilities owned and operated by a municipality' and 'utilities' has been construed to include garbage collection and disposal. See, e.g., 12 McQUILLIN MUNICIPAL CORPORATIONS § 34.08. If, however, a license, permit or contract (rather than a franchise) is used to grant an exclusive garbage collection and disposal right, then I think that a municipality can be prohibited from providing those services outside its corporate limits but within the franchised service area.

[Section 5-7-60, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended, authorizes a municipality to provide services outside its corporate limits by contract 'except within a designated service area for all such services of another municipality or political subdivision.' See also, 56 AM.JUR.2d Municipal Corporations, Counties and Other Political Subdivisions § 568.

With kind regards,

*2 Karen LeCraft Henderson
Senior Assistant Attorney General

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