1980 WL 120734 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
June 23, 1980

***1** C. Wesley Smith, Esquire
Attorney at Law
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Dear Wes:
In response to your letter concerning a proposed Aiken County ordinance which would prohibit or in the alternative regulate a music amphitheater being built to conduct rock festivals and other similar activities, my opinion is that the Aiken County Council would be faced with procedural and substantive problems if it decides to enact such an ordinance. First, if the ordinance is in the form of a zoning or planning ordinance, the Council must enact it, according to the 'home rule' legislation (§ 4-9-30(9), CODE OF LAWS OF SOUTH CAROLINA, 1976 as amended), pursuant to the provisions of Act No. 487 of 1967. That Act requires zoning and planning to be done as part of a comprehensive and long-range program. See, §§ 6-7-510 et seq., CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended. Therefore, the Council cannot prohibit or regulate such an activity by means of a zoning ordinance unless it does so pursuant to a comprehensive and long-range planning program. Second, the prohibition and/or regulation of a music amphitheater would have to be equated in some way to the prohibition and/or regulation of a public nuisance. There is some authority for the treatment of dance halls and music establishments as subject to a municipal corporation's police power because of their potential nuisance characteristics but I can find no authority for the outright ban on such an activity in the absence of evidence as to its being a nuisance per se as opposed to per accidens. See generally, 6 McQUILLIN MUNICIPAL CORPORATION § 24.89 (1969 rev.vol.); 7 McQUILLIN MUNICIPAL CORPORATION § 24.210 (1968 rev.vol.).
With kind regards,

Karen LeCraft Henderson
Senior Assistant Attorney General

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