

1977 WL 37211 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 3, 1977

\*1 Glen S. Baldwin, Esquire  
Assistant County Attorney  
301 College Street  
Greenville, South Carolina 29601

Dear Mr. Baldwin:

You have requested an opinion from this Office as to whether or not an ordinance adopted by the Greenville County Council pursuant to §§ 63-195.101 et seq., CODE OF LAWS OF SOUTH CAROLINA, 1962, (Cum. Supp.), dealing with county sediment control programs would be applicable to State agencies and departments. In my opinion, such an ordinance would not be applicable to State agencies and departments, and, in particular, to the State Highway Department.

The authorities state that:

the state and its agencies are not within the purview of a statute unless an intention to include them is clearly manifested, especially where prerogatives, rights, titles or interests of the state would be divested or diminished or liabilities imposed on it. [Paulus v. City of St. Louis](#), — Mo. —, 446 S.W.2d 144, 151 (1969). [Emphasis added.]

See also, [Brooks v. One Motor Bus](#), 190 S.C. 379, 3 S.E.2d 42 (1939).

This view seems clearly applicable to the present situation as the provisions of Sections 63-195.101 et seq. of the Code do not clearly manifest an intent to bring the State and its agencies within the purview thereof. This requirement that such an intent be clearly manifested is particularly significant due to the criminal penalties imposed by the provisions of Section 65-195.106.

That State property is exempt from such county regulation is further supported by the rule that an ordinance does not apply to the State unless the charter or enabling legislation expressly gives the city or county authority to bind the State. [Paulus v. City of St. Louis](#), *supra*; [Kentucky Inst. for Education of Blind v. Louisville](#), 123 Ky. 767, 97 S.W. 402 (1906); [Newton v. City of Atlanta](#), 189 Ga. 441, 6 S.E.2d 61 (1939); 62 C.J.S. § 157 Municipal Corporations. Sections 63-195.101 et seq. do not expressly give the county authority to regulate the State. Note should also be taken of the use of the word ‘person’ throughout Sections 63-195.101 et seq. to define those who must comply therewith and as to whom liabilities are imposed. A widely accepted rule of statutory construction is that the use of the word person will not ordinarily be construed to include the State or its political subdivisions. [Hansen v. Commonwealth](#), 344 Mass. 214, 181 N.E.2d 843 (1962).

With kind regards,

Karen LeCraft Henderson  
Assistant Attorney General

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