

1980 WL 120995 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 8, 1980

*1 The Honorable Virgil L. Conrad
Commissioner
South Carolina Department of Social Services
P.O. Box 1520
Columbia, South Carolina 29202

Dear Mr. Conrad:

You have asked this office whether Cayce municipal ordinance 2-2.16, which attempts to regulate and license foster homes, conflicts with authority granted the South Carolina Department of Social Services pursuant to §§ 43-15-10 *et seq.*, Code of Laws of South Carolina, 1976, as amended. As a general rule, a local law may be given effect so long as it is not inconsistent with applicable state or federal laws. [State v. Solomon](#), 245 S.C. 550, 141 S.E.2d 818. However, a municipality may not ‘. . . forbid what the legislature has expressly licensed, authorized or required . . .’ [City of Charleston v. Jenkins](#), 243 S.C. 205, 133 S.E.2d 242, 244, [emphasis added].

Sections 43-15-10 *et seq.*, authorize the Department of Social Services, among other things, to license and regulate foster homes. There are but a few designated exceptions to the Department's regulatory authority. *See*, § 43-15-20. Insofar as the ordinance attempts to license or authorize foster homes which are unlicensed by the state department [or specifically exempted by the act] it is void. A municipality is prohibited from authorizing by ordinance that which the legislature has forbidden. [Coyler v. Thomas](#), 268 S.C. 455, 234 S.E.2d 862; 56 Am.Jur.2d ‘Munic. Corp.’ § 124, at 408.

In addition, several of the requirements of the ordinance are inconsistent with specific statutory and regulatory language. In these instances where the ordinance conflicts with the state's authority, it must yield. [State v. Solomon](#), 245 S.C. 550, 141 S.E.2d 818. The South Carolina Department of Social Services pursuant to its authority at § 43-15-30, has promulgated regulation R114-5-50. The definitive language of R114-5-50A differs significantly from the ordinance's definition of ‘foster home’. Further, the prohibition of the ordinance that ‘[t]here shall be no more than five (5) foster children in a home’, directly conflicts with R114-5-50L(2) which by express language permits up to six (6) foster children per foster household. In addition, the requirement of the ordinance that ‘[f]oster children shall be allowed only in homes where there is a legally married husband and wife’, is contrary to the language of several of the regulatory provisions, particularly R114-5-50A(3).

The sole provision of the ordinance arguably not inconsistent with a specific state law or regulation is the restrictive language concerning the number of foster children in a single bedroom. However, this provision is not severable from the void portions of the ordinance. Moreover, the Department's rules evince a comprehensive regulatory scheme detailing that which is permitted or prohibited in prescribing sleeping arrangements for foster children. As here, where the state has occupied the entire regulatory area, a municipality is prohibited from further regulations. 56 Am.Jur.2d ‘Munic. Corp.’ § 124, at 407.

*2 Accordingly, it is the opinion of this office that Cayce municipal ordinance 2-2.16 is inconsistent with state law and, therefore, preempted.

Very truly yours,

Edwin E. Evans
Assistant Attorney General

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