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Office of the Attorney General

State of South Carolina

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\*1 It is proper for Pickens County to provide specific services such as burying dead animals on private property and placing stone on private driveways when full payment for such services is made to the County in advance of the performance of the work.

Mr. Mendel H. Stewart  
Chairman  
Pickens County Council  
Pickens, South Carolina

QUESTION PRESENTED:

Is it legal for Pickens County to do work such as burying dead animals on private property and placing stone on private driveways when full payment for such services is made to the County in advance of performance of the work?

AUTHORITIES:

Article 1, Section 3, South Carolina Constitution; [Caldwell, et al., v. McMillian, et al.](#), 224 S. C. 150, 77 S. E. 2d 798 (1953); Article 7, Section 15, South Carolina Constitution; [Park v. Greenwood County](#), 174 S. C. 35, 176 S. E. 870 (1934); 73 C. J. S. 277.

DISCUSSION:

The South Carolina Supreme Court in [Caldwell v. McMillan](#) cited the following excerpt from 73 C. J. S. 277 regarding public purpose.

‘In general, a public purpose has for its objective the promotion of the public health, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within a given political division, so that whatever is necessary for the preservation of the public health and safety is a public purpose, and if an object is beneficial to the inhabitants and directly connected with the local government, it will be considered a public purpose; but in order to sustain a public purpose, the advantage accruing to the public must be direct, not merely indirect or remote . . . What constitutes a public purpose depends in part on the time or age, place, objects to be obtained, modus operandi, economy involved, and countless other attendant circumstances, and customs and usages may properly be considered, but, while recognizing the influence of customs and usages already established, the courts also recognized that customs and usages may change so that a purpose which was formerly conceded to be private may now be public; and therefore the novelty of a purpose does not render it the less a public purpose.’

In the situation at hand, the activities being questioned are of novel impression. Nonetheless, burying of dead animals and leveling or private driveways would both come under the public purpose definition ‘for the preservation of the public health and safety’ upheld by the Court in [Caldwell](#). The Court further held in [Caldwell](#) that where a service is rendered within the scope of ‘public purpose’, it is not unfair competition in violation of equal protection or due process by the government.

When there is an established legitimate governmental purpose for the activities, the authority for the delegation of this power to the county government is Article 7, Section 11, of the South Carolina State Constitution. The Court in [Park v. Greenwood](#)

[County](#), 174 S. C. 35, 176 S. E. 870 (1934) interpreted this provision as giving the county, through the Legislature's grant, the power to discharge such governmental functions as it thinks proper to promote prosperity, safety, convenience, health and common good of the county's inhabitants. A recent Home Rule Bill has provided alternative forms of government for the counties, and in certain situations has restricted the power of the Legislature in granting power to the various counties; however, the power of the county relating to matters of safety, convenience, and health have not been limited.

\*2 Since full payment for the services will be made in advance, it is not felt that the prohibitions of Article X, Section 6, Constitution of South Carolina, are applicable.

CONCLUSION:

It is the opinion of this Office that the activities involved here fit within the definition of a proper governmental purpose and that this proper public purpose is extended to the county by the South Carolina State Constitution, Article 7, Section 11, as it is interpreted by [Park v. Greenwood](#), when full payment for the subject services is made to the county in advance of performance of the work.

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