2007 WL 2459754 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
July 12, 2007

*1 Daniel L. Draisen, Esquire
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207 East Calhoun Street
Anderson, South Carolina 29621

Dear Mr. Draisen:
We understand from your letter that you represent the Town of Pendleton (the "Town") and desire an opinion concerning the impact of the Abandoned Manufactured Home Removal Act on existing laws.
Recently, the Town revised its Unfit Dwellings Ordinance to deal with the problem of abandoned mobile homes that are on land not owned by the mobile home owner in accordance with the Dwellings Unfit for Human Habitation, § 31-15-10, et seq. Thereafter, the legislature enacted the Abandoned Manufactured Home Removal Act, § 6-1-150, and I was asked to review the Town's Ordinance in light of this new legislation.

I believe a conflict exists as between these two statutes particularly with regard to who may be taxed with the costs of removal or demolition of a derelict mobile home.

Further, you explain:
In Title 31, the landowner may be taxed with the cost of removal but in Title 6 only the owner of the mobile home may be taxed with the cost of removal (unless the owner of the mobile home and the land are the same). The new statute does not state that it repeals Title 31 nor is there any indication that it does so by implication.

Thus, you request an opinion of this Office regarding "how these statutes can be reconciled and advise how the Town should handle the removal/demolition of unfit mobile homes in light of the same. Particularly, the Town is interested in your opinion with regard to the taxing of costs for the removal of derelict mobile homes."

Law/Analysis

Chapter 15 of title 31 of the South Carolina Code (2007) addresses municipalities' rights with regard dwellings unfit for human habitation. In particular article 1 under this chapter gives specific rights to municipalities with populations over 1,000. Section 31-15-20 of the South Carolina Code states:
Whenever any municipality of this State finds that there exist in such municipality dwellings which are unfit for human habitation due to (a) dilapidation, (b) defects increasing the hazards of fire, accidents or other calamities, (c) lack of ventilation, light or sanitary facilities or (d) other conditions rendering such dwellings unsafe or insanitary, dangerous or detrimental to the health, safety or morals or otherwise inimical to the welfare of the residents of such municipality, such municipality may exercise its police powers to repair, close or demolish any such dwelling in the manner herein provided.

Section 31-15-10 of the South Carolina Code defines "dwelling" as "any building or structure, or part thereof, used and occupied for human habitation or intended to be so used and includes any outhouses and appurtenances belonging

thereto or usually enjoyed therewith." S.C. Code Ann. § 31-15-10(7). This same provision defines "owner' as "the holder of the title in fee simple and every mortgagee or record...."

*2 According to section 31-15-30 of the South Carolina Code a municipality may take action to repair, close, or demolish a dwelling via an ordinance. In such an ordinance, the municipality may designate or appoint a public officer to exercise the municipality's police power. S.C. Code Ann. § 31-15-30(1). The public officer may investigate and hold a hearing upon proper notice to the owner and all parties in interest in regard to the dwelling in question. Id. § 31-15-30. If the public officer finds the dwelling unfit for human habitation, he or she may issue an order to the owner of the dwelling to repair, alter, or improve the dwelling, or in some cases remove or demolish the dwelling. Id. § 31-15-30(3). If the owner fails to comply with the public officer's order to repair, alter, or improve the dwelling, the public officer "may cause such dwelling to be repaired, altered or improved or to be vacated or closed...." Id. § 31-15-30(4). Further, if the owner fails to remove or demolish the dwelling pursuant to the public officer's order, "the public officer may cause such dwelling to be removed or demolished...." Id. § 31-15-30(5). Section 31-15-30(6) states with regard to the cost of repairs and removal: "That the amount of the cost of such repairs, alterations or improvements, vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which such cost was incurred and shall be collectible in the same manner as municipal taxes."

As you pointed out in your letter, the Legislature recently passed the Abandoned Manufactured Home Removal Act (the "Act"). 2007 S.C. Act No. 45. The Act essentially authorizes local officials or landowners to seek the removal and subsequent sale or destruction of derelict mobile homes from a magistrate's court. Section 6-1-150(A)(1) defines "derelict mobile home" as one

(a) that is:

(I) not connected to electricity or not connected to a source of safe potable water supply sufficient for normal residential needs, or both;

(ii) not connected to a Department of Health and Environmental Control approved wastewater disposal system; or

(iii) unoccupied for a period of at least thirty days and for which there is clear and convincing evidence that the occupant does not intend to return on a temporary or permanent basis; and

(b) that is so damaged, decayed, dilapidated, unsanitary, unsafe, or vermin-infested that it creates a hazard to the health or safety of the occupants, the persons using the mobile home, or the public.

According to section 6-1-150(A)(3), municipalities are included in the definition of local governing body.

Sections 6-1-150(B) and (C) set forth the procedure for removal by a landowner and by a public official respectively. Regardless of whether a landowner or a local official initiate the removal of a mobile home, the Act requires the person seeking removal to proceed through an action in magistrate's court. If the magistrate's court determines the mobile home in question is derelict and should be removed and disposed of, section 6-1-150(D) states:

*3 (1) All costs of removal and disposal are the responsibility of the owner of the derelict mobile home, and may be waived only by order of the magistrates court or if a local governing body has a program that covers removal and disposal costs.

(2) A lienholder of the derelict mobile home is not responsible for the costs of removal and disposal unless the lienholder or his agent effects a recovery of the mobile home under its lien and subsequently the lienholder or his agent knowingly abandons the mobile home on the property and allows the mobile home to become a derelict mobile home.

(3) If the landowner is the owner of the derelict mobile home and is unwilling or unable to pay the costs of removal and disposal, a lien for the costs of removal and disposal may be placed on the landowner's real property where the derelict mobile home was located.

Furthermore, section 6-1-150(E) provides:
To defray the costs of location, identification, and inspection of derelict mobile homes, a local governing body may impose a registration fee of no more than twenty-five dollars to be paid when a manufactured home or mobile home is registered with the county or municipality. This fee may be in addition to all other fees and charges relating to a manufactured home or mobile home and may be required to be paid before electrical connection.

We agree with your assessment that no provision contained in the Act explicitly repeals the provisions contained in chapter 15 of title 31 dealing with dwellings unfit for human habitation. Thus, we consider whether in enacting the Act our Legislature intended to repeal these provisions by implication. According to the Supreme Court in Capco of Summerville, Inc. v. J.H. Gayle Construction Co., Inc., 368 S.C. 137, 141-42, 628 S.E.2d 38, 41(2006):
Repeal by implication is disfavored, and is found only when two statutes are incapable of any reasonable reconcilement. Moreover, the repugnancy must be plain, and if the two provisions can be construed so that both can stand, a court shall so construe them.

(citations omitted). Furthermore, "[t]here is a presumption that the legislature has knowledge of previous legislation when later statutes are enacted concerning related subjects." City of Camden v. Fairfield Elec. Co-op., Inc., 372 S.C. 543, 548, 643 S.E.2d 687, 690 (2007).

Certainly, it is possible for the Act and the provisions contained in chapter 15 of title 31 to overlap one another. Given the breadth of the definition of dwelling found in chapter 15 of title 31, we believe these provisions apply to mobile homes. Accordingly, both the Act and chapter 15 of title 31 pertain to mobile homes. In addition, both the Act and chapter 15 of title 31 allow for the demolition or disposal of homes under certain stated conditions. Further, these two bodies of law allow for such action to be taken by municipalities, by specification under chapter 15 of title 31 and by definition under the Act. Thus, we can imagine these two bodies of law both may be applicable to the same set of circumstances and the same mobile home. However, in reviewing both the Act and chapter 15 of title 31, we believe they serve different circumstances and we would not construe them as in conflict with one another.

*4 First, the criteria to find a mobile home derelict under the Act differs from the criteria required to find a dwelling unfit for human habitation under chapter 15 of title 31. While certainly we can foresee situations in which a mobile home may satisfy the criteria under both bodies of law, this may not always be the case. Second, the procedures by which a municipality would follow in disposing of mobile home under these two pieces of legislation are very different. Under chapter 15 of title 31, although the public officer must hold a hearing after notice to determine the status of a particular dwelling, the determination as to whether a dwelling may be demolished is essentially made by the municipality or its designated public officer. Whereas under the Act, the determination as to whether a mobile home is derelict is ultimately made by a magistrate. Third, chapter 15 of title 31 includes provisions not only allowing a municipality to order the demolition of a mobile home, but it also allows the public officer to order the repair, alteration, and improvement of dwellings the municipality finds unfit for human habitation. The Act, on the other hand, only deals with the removal of a mobile home. Thus, while the provisions of both bodies of law could overlap when dealing with the removal of a mobile home, we find them to be very different from one another in the scope of their application and the mechanisms by which they operate. Accordingly, we believe the Legislature intended to serve different purposes in enacting each piece of legislation. This belief is further supported by the fact that the Legislature is presumed to have knowledge of the provisions contained in chapter 15 of title 31 when it enacted the Act.

Moreover, we also do not believe these two bodies of law are necessarily in conflict with one another. If a mobile home meets the criteria set forth under section 31-15-20 of the South Carolina Code, a municipality may proceed to require the repair, closing, or demolition of the dwelling under chapter 15 of title 31. Nonetheless, if the same mobile home is found to be derelict under the Act by a municipal court judge, that judge may order the removal and subsequent destruction or sale of the mobile home. We do not however, read these two sets of legislation as exclusive of one another. Thus, we do not believe the Act implicitly repeals any of the provisions contained in chapter 15 of title 31.

Specifically, you ask use to reconcile the provisions contained in each of these bodies of law dealing with who is responsible for the cost of removal or demolition of a derelict mobile home. You point to section 31-15-30(6), cited above, which allows the public officer to place a lien on "the real property" for the cost associated with the repair, improvement, removal or demolition of a dwelling. In addition, you refer to section 6-1-150(D)(1) of the Act, which places responsibility for the cost of the removal and disposal of a derelict mobile home on its owner. Thus, you ask us to reconcile these two provisions.

*5 As we stated above, we believe the Act and chapter 15 of title 31 operate independently of one another. Therefore, we believe section 31-15-30(6) controls when a municipality proceeds under the provisions of chapter 15 of title 31. Likewise, section 6-1-150(D)(1) controls when a municipality proceeds under the Act. However, we do not find these two provisions conflict with one another.

Conclusion

It is our understanding that the passage of the Act was an effort to assist landowners renting property to mobile home owners. With this understanding and based on our analysis above, we do not believe the provisions contained in chapter 15 of title 31 conflict with the provisions under the Act. While certainly the occasion may arise in which either of these bodies of law may be used by a municipality to seek the removal or demolition of a mobile home, we believe they remain separate and compatible with one another. Furthermore, with regard to the provisions in each body of law dealing with who is responsible for the cost of such removal or demolition, we also do not find these provisions incompatible with one another and depending upon which body of law under which the municipality proceeds determines whether section 31-15-30(6) or 6-1-150(D)(1) is applicable.

Very Truly Yours,

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