

1979 WL 43107 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 10, 1979

***1 RE: Sediment Control Program Authority**

Mr. Cary D. Chamblee
Deputy Director
S. C. Land Resources Conservation Commission
2221 Devine Street
Suite 222
Columbia, South Carolina 29205

Dear Cary:

You have contacted this office in order to have determined whether a county government can by ordinance legally establish authority over a county sediment control program which would be free from the authority of the local soil and water conservation district.

Study of the applicable statutes reveals that the General Assembly has in Chapter 13 of Title 48, S. C. Code of Laws (1976), set forth both the procedure for the establishment of a county sediment control program and the conditions under which such a program must be conducted. In accordance with Section 48-13-10, a county taxing authority (the county governing body per Section 48-13-60) may designate an agency to carry out the county's sediment control program. After this step has been completed, it is permissible for ground to be broken for a project only after a county grading permit has been issued for that project by the designated administering agency.

Two prerequisites to the issuance of a permit are set forth in Section 48-13-20. They are stated as follows:

‘No permit shall be issued until the applicant has submitted plan to control erosion and siltation and such plan has been approved by the local soil and water conservation district board.’

These additional conditions are of considerable import for with the amendment of the State Constitution to provide for ‘home rule’, it might appear that a county governing body could proceed with the establishment and administration of a sediment control program in the county without the approval of the local conservation district board. However, [Section 4-9-80 of the 1976 Code](#) specifically states that ‘The provisions of this chapter shall not be construed to devolve any additional powers upon county councils with regards to . . . other political subdivisions by whatever name designated . . .’ Since it is stated in Section 48-9-630 that a soil and water conservation district when duly filed and recorded by the Secretary of State shall become a governmental subdivision of this State and a ‘body corporate and politic,’ it follows that the conservation districts’ power to approve siltation and erosion plans is not devolved as an additional power upon the various county councils by ‘home rule.’ This conclusion is in accord with the primary theory of home rule that each county operating under the council form of government conduct its own affairs without periodic intervention into those affairs by the state legislature. [Duncan v. County of York, 267 S.C. 327, 228 S.E.2d 92 \(1976\)](#).

Of equal assistance in answering the question presented is Section 4-9-30 of the home rule legislation where it is clearly stated at paragraph (14) that. ‘No ordinance including penalty provisions shall be enacted with regard to matters provided for by the general law, except as specifically authorized by such general law; . . .’ Since Sections 48-13-10 et seq.

are a part of the general law of this State, the county governing bodies are without power to deprive the conservation district boards of their authority to approve county grading permits.

*2 In construing a statute or group of statutes, the primary guide is, of course, the intent of the legislature. [Helfrich v. Brasington Sand & Gravel Co.](#), 268 S.C. 236, 233 S.E.2d 291 (1977). Accordingly, it is the opinion of this Office that the General Assembly did not intend that the County Sediment Control Program enabling authority be pre-empted or sidetracked through the enactment of home rule legislation, and that it is likewise not to be concluded by the counties that 'home rule' exempts them from all state authority to the end that they are able to control erosion and siltation free from the supervision of the boards of the local conservation districts.

In sum, the boards of the local soil and water conservation districts in this state continue to have the power to approve or disapprove erosion and siltation control plans proffered through legally established county sediment control programs, the enactment of home rule legislation having effected no change in this authority.

Sincerely,

Reddick A. Bowman, Jr.
Assistant Attorney General

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