

1974 WL 27831 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 26, 1974

\*1 Roberts Vaux, Esquire  
P. O. Drawer 5817  
Hilton Head Island, South Carolina 29928

Dear Mr. Vaux:

Please forgive the tardiness of this response to your request for an opinion; your letter was inadvertently misplaced and I apologize for the error.

In answer to your inquiry concerning the authority of the Town of Bluffton to act under Section 8-1 of Article I, Chapter 6 of its General Ordinances, it is doubtful that the language of Section 8-1 is specific enough to be effective. The general rule of statutory construction governing incorporation by reference is:

Some authorities hold that an ordinance may duplicate or complement statutory regulations, at least where the ordinance preserves the standard of regulation as molded by the general law . . . . The position has been taken, however, that an ordinance which is substantially identical with a statute is invalid because it is an attempt to duplicate the provision of the statute [see *Pipoly v. Benson*, 125 P.2d 432; [Sipperly v. San Diego Yellow Cabs, Inc.](#), 201 P.2d 543.]. *McQuillin, Municipal Corporations* Vol. 5, § 15.22 at 92, 93 (1969).

Furthermore, an ordinance may by reference adopt the provision of other laws, either statutes or ordinances. *Id.*, § 15.25 at 102.

The fact that an ordinance is a mere reiteration of a statute does not affect its validity. *Id.*, § 16.11 at 148.

An ordinance may by appropriate language adopt by reference the provisions of existing statutes or ordinances, . . . , and such provisions adopted by reference need not be set out in totidem verbis and entered upon the minutes of the enacting body. *Id.*, § 16.12 at 148-49.

Previous opinions of this office, herewith enclosed, indicate that incorporation by reference is permissible if the document adopted is sufficiently identified and is made part of a public record. In this regard, Section 8-1 does not contain a reference to the specific volume of the Code wherein the State Board of Health Rules and Regulations are found. Moreover, the Rules and Regulations are not contained, in their entirety, in the Code and several can be ascertained only by referring to the office of the Secretary of State where they are on file. Consequently, the opinion of this office is that the Town of Bluffton cannot properly act pursuant to Section 8-1 of Article I, Chapter 6 of its General Ordinances.

Nevertheless, the Town of Bluffton does have the authority granted to all municipal corporations by Section 47-66, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended, to abate and remove nuisances within the city limits. Bluffton municipal government may find that the most effective tool to alleviate the health problem caused by the Oyster Cooperative's lack of maintenance is the power given to it by Section 47-66.

Kind regards,

Karen LeCraft Henderson

Assistant Attorney General

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