1974 S.C. Op. Atty. Gen. 209 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3816, 1974 WL 21322

Office of the Attorney General

State of South Carolina
Opinion No. 3816
June 28, 1974

***1 Re: Act bearing Ratification Number 989—'Collection and Disposal of Solid Waste'**

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Sumter, South Carolina 29150

Dear Mr. Bryan:
Your letter of April 12, 1974, has been referred to me for answer. Your letter raises three questions:
1. Can the county require residents, who do not want it, to accept door-to-door collection service and to levy a service charge upon them?

2. In view of the so called 'Local Government amendment of Article 8 of the Constitution and of Judge Rosen's order in the Dorchester County case, is this statute premature without the County's having first acquired the autonomy contemplated by the amendment?

3. How should the fees for this service best be collected?

As to the first question, your initial conclusion that residencies may not be required to use the county's furnished solid waste facilities is correct.
In contract to the foregoing discussion, the view has been taken that property owners or users cannot be compelled to use a scavenger licensed corporation, at least with respect to matters not presently noxious, dangerous to health, or offensive to the senses. But, businesses having commercial garbage may be required to file a statement giving the name of their private scavenger and an estimate of annual tonnage. Consistently, it has been ruled that a municipal corporation cannot authorize one to go on private premises and gather and remove, at the owner's expense, rubbish and waste that is not a nuisance and may not become such. Similarly, the view has been taken that since all garbage is not matter offensive to the senses, in that garbage embraces all purgings and refuse, animal and vegetable matter, from a kitchen, a monopoly of collecting it from private premises cannot be granted by a municipal corporation. 7 McQuillin on Municipal Corporations § 24.251 at 98–99 (1968).

Thus, it is the opinion of this office that residents of the county may not be required to use the solid waste collection service.

The second question you pose is whether or not the so-called 'local government amendment' of Article 8 of the Constitution of South Carolina and the Dorchester County case, Knight v. Salisbury, Opinion No. 19842, filed June 17, 1974, has any bearing on the constitutionality of Act bearing R #898. As you suggest, there is a question as to whether

or not Article 10, Section 6 which is in apparent conflict with Article 8, Section 7 of the Constitution, even applies to this Act since the collection charge authorized by the Act may be a fee or assessment rather than a tax.

However, in light of the Supreme Court's opinion in Knight v. Salisbury, a copy of which is enclosed, it appears that Article 10, Section 6 of the Constitution has been impliedly repealed by the provisions of new Article 8. The Act in question applies to all counties of the State, and thereby fulfills the requirement of Article 8, Section 7 of the Constitution. As I know you have seen or will see upon reading the Knight v. Salisbury decision, the decision itself is vague as to whether or not Article 10, Section 6 has actually been repealed. However, this office is of the opinion that Knight v. Salisbury does, in affect, repeal Article 10, Section 6. Consequently, we see no constitutional problem with the Act bearing R #898.

***2** As to the third question, this office sees no reason to prohibit the county from using a lien to collect delinquent fees. However, Richland County or some other county, who has implemented or intends to implement this Act, may have a more efficient method for insuring collection of related fees.

If this office may be of further assistance to you, please do not hesitate to contact us.
Yours very truly,

M. Elizabeth Crum
Assistant Attorney General

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