HENRY MCMASTER
ATTORNEY GENERAL

December 5, 2007

Dennis Pieper, Town Administrator
Town of Summerville
104 Civic Center
Summerville, South Carolina 29483

Dear Mr. Pieper:

We received your letter requesting an opinion of this Office on behalf of the Town Council for the Town of Summerville and the Mayor of the Town of Summerville concerning the legality of a Town of Summerville sign ordinance. Specifically, you ask: "Can the Town enforce the sign ordinance for those signs placed in our corporate boundaries, but within county or state rights-of-way?" You provided us with a copy a letter written by Howard Bridgman, a member of the Summerville Town Council, in which Councilman Bridgman states as follows:

> There has been some recent discussion in reference to the Town of Summerville's sign ordinance. Some believe that state law overrides town code. It is my understanding that the town may enact an ordinance stricter than state law, but not more lenient than state law.
>
> The discussion in question was over political signage specifcially. The town's ordinance states that signs must be a certain size within town limits. Some argue that we can only enforce this on town maintained roads. Others would argue that this could be enforced on any roadway within town limits.

Councilman Bridgman attached a copy of the Summerville zoning ordinance concerning signage to his letter, which you included with your request.

Law/Analysis

Pursuant to the Summerville Code, a permit generally is required for "the erection, alteration or reconstruction of any sign unless otherwise noted and shall be issued by the department of planning and development." Summerville, S.C., Code § 32-241(b). However, section 32-243 of the

Summerville Code provides a list of signs for which a permit is not required. Id. § 32-243. Councilman Bridgman highlights that these signs include: "Political campaign posters, placecards and special event notices, provided such signs do not exceed 310 square inches." Id. § 32-243(5). This provision reads on to provide the following additional restriction on political signs: "Political campaign posters shall not be displayed more than 30 days before an election/primary and all signs are to be removed within ten days after their reason for existence." Id.

As noted in a previous opinion, the "regulation of signs and billboards is generally found to be a part of zoning regulation and is generally accepted to be within the police powers of political subdivisions." Op. S.C. Atty. Gen., February 6, 1986. Thus, in order to determine the scope of this ordinance's application, we look to the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (the "Act"), which governing local zoning issues and allows local governments to enact zoning ordinances. S.C. Code Ann. §§ 6-29-310 et seq. (2004). Section 6-29-330 of the South Carolina Code (2004), under the Act, states "a municipality may exercise the powers granted under the provisions of this chapter in the total area within its corporate limits." Accordingly, we believe the Town's zoning ordinances are generally applicable with the Town's corporate limits, which we would presume includes any rights-of-way held by the state and counties located within the Town.

Furthermore, we note section 6-29-770 of the South Carolina Code (2004), which specifically addresses the impact of zoning ordinances on governmental entities. This provision states, in pertinent part:

> (A) Agencies, departments, and subdivisions of this State that use real property, as owner or tenant, in any county or municipality in this State are subject to the zoning ordinances.
>
> (B) A county or agency, department or subdivision of it that uses any real property, as owner or tenant, within the limits of any municipality in this State is subject to the zoning ordinances of the municipality.

S.C. Code Ann. § 6-29-770(A) & (B). According to this provision, the Legislature specifically makes municipal zoning ordinances applicable to counties and the State. Thus, based upon the provisions contained in the Act, the Town's ordinances governing signage appear to be applicable to all areas within its municipal limits including property held by or under the control of counties or the State.

However, as Councilman Bridgman alluded in his letter, the ability of the Town to enforce its signage ordinance in a right-of-way held by the State may be limited by state law. Under Section

5-7-30 (2004) of the South Carolina Code, municipalities are statutorily authorized to enact ordinances for the "security, general welfare, and convenience of the municipality . . . ." S.C. Code Ann. § 5-7-30. However, this authority is not unlimited as such ordinances cannot be inconsistent with the Constitution or the general laws of this State. Id. According to our Supreme Court: "A conflict between a state statute and a county ordinance exists when 'both contain either express or implied conditions which are inconsistent with each other . . . . If either is silent where the other speaks, there can be no conflict between them. Where no conflict exists, both laws stand.'" South Carolina State Ports Auth. v. Jasper County, 368 S.C. 388, 403, 629 S.E.2d 624, 631 (2006) (quoting Town of Hilton Head Island v. Fine Liquors, Ltd., 302 S.C. 550, 553, 397 S.E.2d 662, 664 (1990)).

Chapter 25 of title 57 of the South Carolina Code contains numerous provisions regulating outdoor advertizing along state highways and interstates. S.C. Code Ann. §§ 57-25-10 et seq. Section 57-25-10 of the South Carolina Code (2006) makes it unlawful, with few exceptions, to display signs in highway right-of-ways. This provision states:

> It is unlawful for a person to display, place, or affix a sign, as defined in Section 57-25-120(3), within a right-of-way and visible from the main-traveled way of the highway. A person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days.

S.C. Code Ann. § 57-25-10. Section 57-25-15 of the South Carolina Code (2006) provides a limited exception to section 57-25-10 for certain highway signs erected by local governing bodies and churches. Thus, regardless of the Town's ordinance regulating signage, the Legislature makes clear through section 57-25-10 that signs, which we believe includes signs of a political nature, are prohibited in a highway right-of-way.

In addition to your questions concerning signs located in county and state rights-of-way, we gather from Councilman Bridgman's letter that he is also concerned about the impact of section 57-25-140 of the South Carolina Code (2006), contained among the provisions of the Highway Advertising Control Act, on the Town's ability to enforce its signage ordinance. This provision is contained in the portion of chapter 25 of title 57 pertaining to the erection and maintenance of signs adjacent to highway and interstate rights-of-way, rather than in the rights-of–way. This provision states, in pertinent part:

> (A) An outdoor advertising sign must not be erected or maintained after June 30, 1975, which is visible from the main-traveled way of the interstate or federal-aid primary highways in this State and erected

> with the purpose of its message being read from the traveled way, except the following:
>
> . . .
>
> (9) signs of thirty-two square feet or less advertising agricultural products of a seasonal nature, signs of a political nature, signs erected by or on the behalf of eleemosynary, civic, nonprofit, church, or charitable organizations, or signs advertising special community events which are erected temporarily for ninety days or less.

S.C. Code Ann. § 57-25-140(A) (emphasis added). Thus, this provision appears to allow the placement of political signs in the areas adjacent to the right-of-way of an interstate or federal-aid primary highway without any restrictions on size of the sign or the timing in which the sign is allowed as are found under the Summerville Code. Accordingly, we gather Councilman Bridgman is concerned with whether the additional restrictions provided in the Summerville Code apply to signs governed under chapter 25 of title 57.

We believe this question is resolved by section 57-25-220 of the South Carolina Code (2006), also contained in the Highway Advertising Control Act. This provision states as follows:

> Nothing in this article abrogates or affects the provisions of a lawful ordinance, regulation, or resolution which is more restrictive than the provisions of this article.

S.C. Code Ann. § 57-25-220. Section 57-25-220 clearly indicates the Legislature's intent not to impact existing local regulations with the passage of the Highway Advertising Control Act. Accordingly, we do not believe section 57-25-140(A)(9) would preempt the portion of the Summerville Code regulating political signs. Thus, we are of the opinion that should a sign be located within the Town of Summerville, but also be of the nature for which it would be regulated under the Highway Advertising Control Act, the more restrictive provisions contained in the Summerville Code apply.

Conclusion

Based on our analysis above, we are of the opinion that provisions of the Summerville Code regulating signage are generally applicable within the Town's municipal limits, and we do not believe rights-of-way owned or controlled by counties or the State are exempt from such provisions. However, we also find that the Legislature, through the enactment of section 57-25-10, prevents

signs, except those allowed under section 57-25-15, from being displayed in highway rights-of-way despite the provisions of the Summerville Code that seemingly allow the posting of such signs. Lastly, with regard to section 57-25-140's impact on the Town's ability to enforce its signage ordinance, we believe via section 57-25-220, the Legislature clarified that the provisions contained in the Highway Advertising Control Act, which would include section 57-25-140, do not abrogate local ordinances and regulations that are more restrictive.

Very truly yours,

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REVIEWED AND APPROVED BY:

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