1973 WL 26574 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
January 11, 1973

***1** Mr. Rogers E. Harrell
Town Attorney
Messrs. Harrell & Brown
Attorneys at Law
Post Office Box 126
Kingstree, South Carolina 29556

Dear Mr. Harrell:
Thank you for your letter of December 27, 1972, concerning a zoning ordinance adopted by the Town of Kingstree.

I am not advised as to whether this ordinance was adopted pursuant to the provisions of Sections 47-1001, et seq., Code of Laws of South Carolina, 1962, which provide that cities and towns may by ordinance, adopt zoning ordinances in accordance with the provisions thereof. I presume, however, that it was so adopted. This conclusion is reached in view of the general statement of law contained in McQUILLIN, MUNICIPAL CORPORATIONS ¶25.32, that a general grant of the police power to municipalities does not carry with it the power to enact comprehensive zoning laws. I do not find any specific authority in this State precisely upon the point, but the cases decided under the permissive zoning statute referred to contain frequent statements to the effect that the municipalities involved in the litigation adopted zoning regulations pursuant to the provisions of the cited enabling statutes. For example, in Stevenson v. Board of Adjustment of the City of Charleston, 230 S.C. 440, 96 S.E.2d 456, the Court recited that the City of Charleston adopted its zoning ordinance 'pursuant to the statutory law of South Carolina which is now codified as Sections 47-1001 to 47-1017, inclusive—.' Additionally, the case of Central Realty Corporation v. Allison, 218 S.C. 435, 63 S.E.2d 153, concerned the validity of an ordinance adopted by the City of Greenville, and which required that a protest should be filed with the City Clerk at a designated time before the public hearing required by the statute. It was held that this ordinance was merely in implementation of the State statute and served to fill a void within the State law and that it was not repugnant to or in conflict with the State law. Such a determination impels the conclusion that the Supreme Court of this State considers that cities and towns must comply with the State law and may implement the same, but may not enact ordinances in conflict therewith. This is nothing more nor less than the application of the principle that where the State has preempted an area, it does so to the exclusion of inconsistent provisions of municipal ordinances.

Section 9(F) of the Kingstree ordinance provides that an appeal from the decision of the Board of Adjustment may be made within ten days after the filing thereof to the Town Council of the Town of Kingstree and provides further that an aggrieved person may apply to a court of competent jurisdiction for review of the decision of the Town Council within ten days after such decision.

It is my opinion that this ordinance is invalid as being in conflict with the enabling statute codified as Section 47-1014. This section provides that any person aggrieved by a decision of the Board of Adjustment may appeal to a court of record within 30 days after the filing of the decision by the Board. The ordinance, in Section 9(F), has the effect of providing for an intermediate appeal, which is not authorized by the enabling statute. As I understand the circumstances, the Board of Adjustment made a decision which was reversed by the Town Council. This places the parties in a different position from that contemplated by the enabling statute. Had the statutory provision been followed, the appellant, on proceedings before the circuit court, would be a different party from the one who may now choose, under the ordinance, to appeal the decision of the Town Council. This is not contemplated by Section 47-1014, and the ordinance, in my opinion, is invalid as being in conflict with the statute.

***2** Moreover, it is my opinion that the time limitations for perfecting an appeal to the courts are a matter vested exclusively in the Legislature and cannot be altered by municipal ordinance, as is sought to be done in Section 9(F).

It is my view that Section 9(F) is invalid in providing for an appeal to the Town Council and that, on the contrary, an appeal from the Board of Adjustment lies directly to the courts from its decision.

The cases cited below have been considered in the preparation of this opinion.
Cordially,

Daniel R. McLeod
Attorney General

1973 WL 26574 (S.C.A.G.)

End of Document