

1973 S.C. Op. Atty. Gen. 144 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3524, 1973 WL 20984

Office of the Attorney General

State of South Carolina

Opinion No. 3524

May 16, 1973

**\*1 Re: No. 166—Labor Matters**

Honorable Edgar L. McGowan  
Commissioner of Labor  
Department of Labor  
P. O. Box 11329  
Columbia, South Carolina 29211

Dear Commissioner McGowan

Your letter of May 14, 1973, has been forwarded to me by the Attorney General for reply. In that letter you recuest that this office advise you as to whether there is any prohibition in the Constitution, statute or court decisions in South Carolina which would prohibit the South Carolina Department of Labor from enforcing the South Carolina occupational safety and health standards in the public sector.

Section 40–261, Code of Laws of South Carolina, provides in part that:

The Commissioner of Labor may promulgate, modify or revoke rules and regulations which will have the full force and effect of law . . . for any and all employees working within the state of South Carolina, whether employed in the public or private sector.

Public employment encompasses employment by all branches or government or bodies politic which serve the needs of the general public. See 35 Words and Phrases, p. 155. The grant of authority contained in the language of Section 40–261 quoted above would, of course, cover employees employed by all branches of state, county and municipal government.

Article III, Section 1, of the South Carolina Constitution vests the General Assembly with the power to pass laws regulating all areas of public and private conduct in this State. In [Byrd v. Lawrimore](#), 212 S.C. 281, 288, 47 S.E.2d 728 (1948), our Supreme Court in discussing the grant of power to the General Assembly under Article III, Section 1, stated:

The General Assembly has a right to pass such legislation as in its judgment may seem beneficial to the state, and to create such agencies of government as may be necessary to carry out its purpose, unless expressly prohibited by the Constitution. To the Legislature of South Carolina, consisting of the House and Senate, is granted the legislative power by the Constitution of 1895, article 3, § 1, in this broad language: ‘The legislative power of this State shall be vested in two distinct branches, the one to be styled the ‘Senate’ and the other the ‘House of Representatives,’ and both together the ‘General Assembly of the State of South Carolina.’”

Our courts have held that by the use of this language the people of the state vested the General Assembly with the entire legislative power of the state, subject only to such restrictions upon and regulations of such power as were contained in the Constitution itself. It is the theory and intent of the Constitution of South Carolina that the powers vested in the General Assembly include all powers not specifically reserved by the Constitution.

Additionally, in [Deese v. Williams](#), 236 S.C. 292, 295, 113 S.E.2d 823 (1960), our Court said:

Under our form of government, the legislative power of the General Assembly is subject only to such restrictions as are contained in the Constitution of this State or of the United States.

\*2 There is no federal or state constitutional provision which would prohibit or restrict the General Assembly from passing a law requiring public employers to comply with the occupational safety and health standards promulgated by the South Carolina Commissioner of Labor. Moreover, our court has consistently held that counties and other political subdivisions of the State are subject to legislative control by the General Assembly. In [Parker v. Bates](#), 216 S.C. 52, 59, 56 S.E.2d 723 (1949), the court stated: Counties are subdivisions of the State, subordinate and subject to legislative control, created and existing with a view to the policy of the State and serving as its agencies.

In [Cox v. Bates](#), 237 S.C. 198, 216, 116 S.E.2d 828 (1960), Chief Justice Stukes, speaking for the court, reaffirmed the [Parker](#) decision by stating:

Counties, as arms of the State, are subject to control by the General Assembly.

It is beyond question that there is nothing in the Constitution, statutes or court decisions of South Carolina which would prohibit or restrain the South Carolina Department of Labor from enforcing its occupational safety and health standards in the public sector.

I hope that this sufficiently answers the question posed in your letter of May 14th, and if we can be of any further assistance, please do not hesitate to call upon us.

Yours very truly,

Ellison D. Smith, IV  
Assistant Attorney General

1973 S.C. Op. Atty. Gen. 144 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3524, 1973 WL 20984