1973 WL 26915 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
October 5, 1973

***1** Robert O. Conoley, Esc.
City Attorney
City of Greenville
Greenville, South Carolina

Dear Mr. Conoley:
You have requested an opinion from this office as to:
'a municipality adopting by reference the S. C. State Code provisions, including rules and regulations, pertaining to health and sanitation, food and drugs, milk and milk products, day care centers, and homes for the infirm and aged.'

Our research fails to disclose any provisions of the South Carolina Code prohibiting a municipality from incorporating in its ordinances specific Code provisions including Rules and Regulations set forth in Volume 17 of the Code. Inasmuch as the Code sections which, according to the attachment to your letter, you intend to incorporate by reference are of general state-wide application, however, there would appear to be no necessity for the republication of the provisions in the Greenville municipal ordinances.
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 Pinoly v. Benson, 125 P.2d 482; Sipperly v. San Diego Yellow Cabs, Inc., 201 P.2d 543.]. McCuillin, 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.

A major consideration in determining a municipality's power to adopt by reference in its ordinances the provisions of state statutes is that the municipality cannot regulate matters of state concern. In other words, municipal legislative power is restricted to the enactment and enforcement of municipal legislation. The Code provisions, including rules and regulations, which you plan to adopt in the areas of food and drugs, health and sanitation, milk and milk products, and day care centers and convalescent homes have been adopted by the South Carolina State Board of Health pursuant to Section 32-8 of the Code. There is no language in that Section which gives to the State Board of Health rule making authority to the exclusion of all other governmental units possessing a legitimate interest in health matters. Likewise, Section 32-265 of the Code, establishing the Greenville County Board of Health and allowing for the inclusion of the City of Greenville within the provisions of the Act, states that the County Board shall have the same powers as are imposed by law upon local boards of health and such other powers as are prescribed by the Act. Section 32-61 of the Code allows municipal boards of health to enact rules and regulatiosn not inconsistent with rules and regulations promulgated by the State Board of Health.

***2** One of the chief powers of municipal government is the conservation and promotion of public health through sanitation and other means. When not expressly given, power to provide for the health of the public generally and of individual inhabitants is conferred by implication upon all governing municipal boards as a part of the police power of the state, delegated to them by the legislature. Id., § 24.220 at 51-2.

Municipal power over public health and sanitation embraces broad authority and discretion to determine the conditions under which health and sanitary regulations shall become operative, and to determine the terms, prohibitions, and requirements of such regulations, consistently with federal and state constitutions, state law, and policy, and the municipal charter. Id., § 24.222 at 53.

Thus, while it is clear that the municipality of Greenville has the power to pass public health ordinances and that those municipal ordinances can incorporate by reference already existing state code provisions, including rules and regulations, the sole effect of the enactment of such ordinances would be needless duplication.

You have additionally inquired:
'Would a Recorder's Court have jurisdiction over the many items covered under these headings if the initiating enforcement agency were inclined to so prosecute in city court.'

Act No. 972 of 1966, 54 STAT. Act No. 972 § 1 at 2367, provides:
When any person is convicted or pleads guilty to any offense in the Recorder's Court of the City of Greenville, the judge may sentence him to pay a fine not exceeding two hundred dollars, or serve a term not exceeding thirty days in jail, with or without hard labor, in the alternative. The judge may suspend any sentence imposed by him upon such terms as in his discretion may seem fit and proper.'

Several of the South Carolina Code provisions which you are considering adopting by reference provide penalties more severe than those now within the jurisdiction of the Greenville Recorder's Court. See, e.g., Rules and Regulations Relating to Licensing Day Care Facilities and Child Care Centers, § II, subsection K, CODE OF LAWS OF SOUTH CAROLINA, Vol. 17, as amended (1962). Enclosed is a copy of an opinion of this office handed down earlier this year in connection with a proposed bill to increase the jurisdiction of the Columbia Municipal Court. Article V, Section 22 of the South Carolina Constitution, ratified on April 4, 1973, along with Act R-205, approved on March 28, 1973, were construed to mean that existing courts are to continue, but that they are to possess only the powers which they had prior to the ratification of Article V. An attempt to bring violations of ordinances providing for penalties more severe than a fine of $200 or a 30-day jail sentence within the jurisdiction of the Greenville Recorder's Court would result in a modification of the powers which that court had prior to April 4, 1973, and would, most probably be invalid. The Court would have jurisdiction, pursuant to Section 15-1010 of the Code, over any of the municipal ordinances which the City adopts by reference and which, upon violation thereof, provide penalties of a $200 fine or a 30-day jail sentence or less. If the City decides not to adopt by reference the specified Code provisions, the Recorder's Court would not have jurisdiction, in the absence of a specific statute giving it such jurisdiction (cf., e.g., Section 4-122, CODE OF LAWS OF SOUTH CAROLINA), to try violations of the Code provisions, including rules and regulations, under consideration.
Very truly yours,

***3** Karen L. Henderson
Legal Assistant

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