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Office of the Attorney General

State of South Carolina

February 2, 1972

***1** 1. Sections 14-600.601 and 56-1521, Code of Laws of South Carolina, 1962, do not authorize the Charleston County Council to require that dilapidated structures be repaired, removed or demolished.

2. The General Assembly probably can, by general act, delegate the police power to the counties and this would include a delegation of the power to require that dilapidated structures be repaired, removed or demolished.

3. It is possible that Article VII, Section 15, of the State Constitution and its implementing act provides a means whereby the Legislature can indirectly delegate by special act the police power to a particular county.

A number of inquiries have been received by this office, which, generally speaking, request our opinion on the authority of Charleston County, specifically the County Council, to force the repair, removal or demolishment of structures in non-incorporated areas of Charleston County which structures, because of their dilapidated condition, constitute fire hazards to surrounding property and persons in the neighborhood.

First, it is our opinion that no existing legislation authorizes the County Council to regulate existing structures along the lines mentioned.

Two Code provisions have been pointed to as possibly offering some basis for Council action: Section 14-600.601, Code of Laws of South Carolina, 1962, as amended by 1971 Act No. 478 and Section 56-1521, as amended by 1971 Act No. 477.

Turning to the latter statute, it only purports, in our opinion, to authorize a county governing body in counties with a population of more than one hundred fifty thousand inhabitants to regulate the 'construction of all plumbing and sewage placed in or on any building or the premises thereof' in any area or section of the county it is deemed necessary for the protection of the public health and safety. In other words, we do not read the section as even authorizing a covered county government to require that plumbing and sewage be placed in existing buildings, much less authorizing action of the type under discussion. A reading of the entire article, of which Section 56-1521 is but a part, indicates, in our opinion, that it is only aimed at regulating sanitary plumbing to be installed and plumbers. You will note that Act No. 1213 of 1968 (Code Section 56-1528.1) specifically provided for the Charleston County Board of Plumbing Examiners and its duties.

Our conclusion as to Section 14-400.601 is similar—i.e., that it would not authorize the County Council, by ordinance or regulation, to require that dilapidated buildings constituting fire hazards be repaired, removed or demolished.

Section 14-400.601 is but a part of Article 1 of Chapter 9, Title 14, 1962 Code, and Chapter 9 is entitled: 'Regulation of Building Construction'. The Article in question dates back to 1956 Act No. 902 which was entitled:
'An Act Authorizing The Governing Body Of Each County Encompassing A Land Area Of More Than Eight Hundred Square Miles And Containing A City Having A Population Of More Than Seventy Thousand To Provide And Prescribe Reasonable Rules And Regulations For Building Construction; To Provide The Procedure Thereof; To Provide For The Enforcement Thereof; And To Provide Penalties For Violations.'

***2** Act No. 478 amended Section 14-400.601 in two particulars. First, it eliminated the land area requirement and increased the municipal population requirement from seventy thousand to one hundred fifty thousand persons. Secondly, it added subsection (d), and Section 14-400.601, as amended, now reads:
'The governing body of each county in this State with a population of more than one hundred fifty thousand persons, according to the most recent official United States census, may determine those areas or sections in the county lying outside of the limits of incorporated municipalities which, by reason of density of settlement or population, or urban growth and development, residential, commercial, business, or industrial, shall come within the purview of those rules and regulations which the governing body of the county may issue pursuant to this section. The governing body may, either by resolution or ordinance, provide and prescribe reasonable rules and regulations for (a) the construction, alteration or repair of all buildings and structures of every kind, (b) the installation of electrical wiring and appliances in such buildings, (c) the licensing on the basic of their qualifications, competence and performance record, of all contractors engaged in the construction, alteration or repair of such buildings, and all electrical contractors engaged in the installation of electrical wiring and appliances in such buildings, and (d) the adoption of such other reasonable rules, regulations and codes pertaining to buildings and structures of every kind not otherwise provided by law, including but not limited to minimum housing, fire prevention, and gas codes, in any such ares or section in which the governing body shall deem such rules and regulations to be necessary or proper for the protection of public health and safety in such area or section.'

As noted in one letter to this office, this statute certainly does not expressly specify that a covered county government could engage in the type of regulation desired. Indeed a reading of the entire statutory scheme convinces us that it was the legislative intent to allow covered counties to regulate construction, alteration and repair of structures when undertaken, not to require that such be undertaken. Section 14-400.603 is indicative of this intent when it specifies that no rule or regulation can require a property owner, his family or employees to acquire a license to perform any kind of 'construction, alteration, repair, electrical wiring installation or other work' upon the owner's property. The statute then specifies that an owner's employees does not include contractors employed by the owner, and that the relief from licensing provided for does not apply to a 'builder, developer or contractor engaged in the construction of buildings for resale.'

Again, we do not feel that Section 14-400.601 would authorize a covered county government to require the repair, removal or demolishment of dilapidated buildings which constitute fire hazards.

***3** Next, we turn to the question of whether the Legislature could authorize the County Council to engage in the regulation of fire hazards.

Obviously, to require the repair and removal of fire hazards in the interests of the public health, safety and welfare would be an exercise of the police power. See Richards v. City of Columbia, 227 S.C. 538, 88 S.E. (2d) 683; and the case of Gaud v. Walker, 214 S.C. 451, 53 S.E. (2d) 316, held that the broad grant of the police power to the Charleston County Council contained in the County Council Act was invalid because of the special legislation prohibition of the Constitution, Article III, Section 34(9). The question thus arises as to whether the General Assembly could by a general act delegate to counties powers in the area of concern.

Our Supreme Court has not ruled on this, the following being from the Gaud v. Walker (supra) decision:
'. . . Respondents argue that the General Assembly may likewise vest the police power in counties. It is not necessary to determine on this appeal whether this may be done under a general statute . . ..' 214 S.C. 451, 474.

This interesting dicts appeared in the recent case of City of Charleston v. Jenkins, 243 S.C. 205, 133 S.E. (2d) 242:
'Governmental authority known as the police power is an inherent attribute of state sovereignty. It can belong to cities or other subordinate government agencies or divisions of the state when and as conferred by the state. But without doubt a state can delegate the power or at least authority to exercise it to municipal and other governmental agencies of the state. The delegation

may be by Constitution, statute or charter. No uillan on Municipal Corporations, Sec. 24.36, page 522.' 243 S.C. 205, 208. [Emphasis ours.]

And in Fowler v. City of Anderson, 131 S.C. 473, 128 S.E. 410, the decree of the circuit court, adopted by the Supreme Court as its opinion, contained the following:
'In the exercise of its police power the state, it seems clear to me, may lawfully delegate to inferior units of the government such exercise of that power as appears to be for the best interest of such unit . . ..'

Speaking of the power and control of the legislature over counties and the absence of any right of local self-government by counties, the court in Lillard v. Nelton, 103 S.C. 10, 87 S.E. 421, quoted the following with approval from Section 98 of Dillard on Municipal Corporations:
'In Dill. Munic. Corp., section 98, the author, discussing this question, says: 'It must now be conceded that the great weight of authority denies in toto the existence, in the absence of special constitutional provisions, of any inherent right of local self-government which is beyond legislative control. The Supreme Court of the United States has declared that a 'municipal corporation, in the exercise of all its duties, including those most strictly local or internal, is but a department of the State. The legislature may give it all the powers such a being is capable of receiving, making it a miniature State within its locality; or it may strip it of every power, leaving it a corporation in name only; and it may create and recreate these changes as often as it chooses, or it may itself exercise directly within the locality any or all the powers usually committed to a municipality * * * The people are the recognized source of all authority, State and municipal; and to this authority it must come at last."

***4** Addressing itself to the question of whether the General Assembly could authorize Greenwood County to construct and operate a hydro-electric plant to generate electricity to be sold by the counties to cities, towns, corporations and individuals within and without the county, our Court set forth as the basis for its affirmative answer the following in Lark v. Greenwood County, 174 S.C. 35, 176 S.E. 870:
'In considering the first question, it should be kept in mind, as stated in Fripp v. Coburn, 101 S.C. 312, 85 S.E. 774, that 'the Constitution of the State is a restraint of power, and the Legislature may enact any law not prohibited thereby.'

'In the recent case of Heslep v. State Highway Department, 171 S.C. 186, 171 S.E. 913, 915, the opinion was closed with this observation, pertinent here: 'It has always been, and is now, the law that the General Assembly may enact any Act it desires to pass, if such legislation is not expressly prohibited by the Constitution of this State, or the Constitution of the United States . . ..'

These last quoted principles are as valid today as they were when Lark was decided, and we cannot put our finger on any provision of the State or Federal Constitutions which forbids the legislature to delegate the police power, or a portion thereof, by general act to the counties. We are inclined to the view that the General Assembly could, by general act, delegate to the counties the authority to require structures that, because of their dilapidated condition, constitute fire hazards be repaired, removed or demolished. Certainly, any such legislation should be as comprehensive in the interest of assuring due process, as that approved in Richards v. City of Columbia, supra, wherein Chapter 5 of Title 36, 1962 Code, was upheld as a valid exercise of the police power. This statutory scheme allows municipalities of over five thousand inhabitants to force the repair, closing or demolishing of dwellings within its confines which are unfit for human habitation due to their condition.

Even if the General Assembly is without the power to directly confer upon counties the police power, there is a possibility that it can now be indirectly done.

Article VII of the Constitution was amended in 1971 (Ratified by Act No. 90) by the addition of Section 15. This provision empowers the General Assembly to authorize counties and municipalities 'to create, participate in, and provide financial support

for organizations [Regional Councils of Government] to study and make recommendations on matters affecting the public health, safety, general welfare, education, recreation, pollution control, utilities, planning, development and such other matters as the common interest of the participating governments may dictate - - -.' The following language may be significant:
'. . . The studies and recommendations by such organizations shall be made on behalf of and directed to the participating governments and other governmental instrumentalities which operate programs within the jurisdiction of the participating governments.'

***5** 'The legislature may authorize participating governments to provide financial support for facilities and services required to implement recommendations of such organizations which are accepted and approved by the governing bodies of the participating political subdivisions . . ..'

The argument is that Article VII, Section 15, has by allowing regional councils of government authorized by the General Assembly to make studies and recommendations on matters affecting the public health, safety and general welfare within the areas of the member counties and municipalities, and by authorizing participating counties and municipalities to receive and finance the implementation of these plans, in effect has created a means whereby counties can enter fields heretofore denied them under the Constitution.

1971 Act No. 363 actually implements Article VII, Section 15 (see Code Supplement Sections 14-343 through 14-349.?? pursuant to it, the Barkeley-Charleston-Borchester Regional Council of Governments has been formed or is in the process of being formed, and Charleston County is or will be a member. Suppose this Regional Council were to study the problem Charleston County is facing in the area of concern and make recommendations as to their solution, which, let's further suppose, would include a scheme whereby the County could force the repair, removal or demolishment of dilapidated structures. If what has been set forth is a valid argument, Charleston County could obtain legislative implementing authorization.

If Article VII, Section 15, in fact allows this round-about legislative delegation of the police power by special act to a particular county, the special legislation prohibition, Article III, Section 34(9) would pose no barrier. The special legislation prohibition has no application to statutes which are specifically authorized by other specific provisions of the Constitution. See Ruggles v. Badgett, 240 S.C. 494, 126 S.E. (2d) 553.

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