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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

September 16, 2005

Don H. Arnold, Director  
Spartanburg County Environmental Enforcement Department  
298 Broadcast Drive  
Spartanburg, South Carolina 29303

Dear Mr. Arnold:

In a letter to this office you referenced the practice of certain newspaper carriers distributing unsolicited newspapers and advertising circulars on driveways. You indicated that the papers and flyers become an eyesore and possibly alert criminals that no one is at the home. You also indicated that the papers are deposited on vacant lots and become a nuisance. You have questioned whether such papers constitute "litter" within the meaning of S.C. Code Ann. § 16-11-700 which states:

(A) A person, from a vehicle or otherwise, may not dump, throw, drop, deposit, discard, or otherwise dispose of litter or other solid waste, as defined by Section 44-96-40(46)<sup>1</sup>, upon public or private property or waters in the State including, but

<sup>1</sup>Such provision states:

(46) "Solid waste" means any garbage, refuse, or sludge from a waste treatment facility, water supply plant, or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations and from community activities. This term does not include solid or dissolved material in domestic sewage, recovered materials, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to NPDES permits under the Federal Water Pollution Control Act, as amended, or the Pollution Control Act of South Carolina, as amended, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended. Also excluded from this definition are application of fertilizer and animal manure during normal agricultural operations or refuse as defined and regulated pursuant to the South

(continued...)

*Rembert C. Dennis*

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not limited to, a highway, park, beach, campground, forest land, recreational area, trailer park, road, street, or alley except:

- (1) on property designated by the State for the disposal of litter and other solid waste and the person is authorized to use the property for that purpose; or
- (2) into a litter receptacle in a manner that the litter is prevented from being carried away or deposited by the elements upon a part of the private or public property or waters.

Criminal penalties are provided for such violations.

In examining your question, First Amendment concerns are raised. Such amendment prohibits laws that abridge the freedom of speech and the press. In Schneider v. New Jersey, 308 U.S. 147 (1939), the United States Supreme Court determined that the First Amendment prohibits municipalities from outlawing the distribution of handbills, circulars and papers in the streets. In Schneider, the Court recognized that

pamphlets have proved most effective instruments in the dissemination of opinion. And perhaps the most effective way of bringing them to the notice of individuals is their distribution at the homes of the people.

308 U.S. at 164. In its decision in Martin v. City of Struthers, Ohio, 319 U.S. 141 (1943) the Supreme Court concluded that the First Amendment prohibits the banning of such materials from house to house. The Court stated that

While door to door distributors of literature may be either a nuisance or a blind for criminal activities, they may also be useful members of society engaged in the dissemination of ideas in accordance with the best tradition of free discussion

319 U.S. at 145. First Amendment free speech guarantees apply not only to political or religious speech but to commercial speech as well. Virginia State Board of Pharmacy et al. v. Virginia Citizens Consumer Counsel, Inc., 425 U.S. 748 (1976); Bigelow v. Virginia, 421 U.S. 809 (1975).

The Georgia Supreme Court in Statesboro Publishing Co., Inc. v. City of Sylvania, 516 S.E.2d 296 (Ga. 1999) dealt with the question of the validity of a city ordinance prohibiting the distribution of free printed material in yards, driveways and on porches. The Court determined that because the ordinance unreasonably restricted home delivery of printed materials, it violated the free

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<sup>1</sup>(...continued)

Carolina Mining Act, including processed mineral waste, which will not have a significant adverse impact on the environment.

speech and press provisions of the Georgia State Constitution. In Miller v. City of Laramie, 880 P.2d 594 (Wy. 1994), the Wyoming Supreme Court struck down an ordinance restricting the distribution of a free weekly newspaper at homes. The Court determined that the anti-littering justification was outweighed by the right of free speech of the distributor. The Third Circuit Court of Appeals in Ad World, Inc. v. Township of Doylestown, 672 F.2d 1136 (3<sup>rd</sup> Cir. 1982) struck down on First Amendment grounds an ordinance that prohibited the distribution of advertising material at a residence, on the property or on the mail box unless the resident requested the material or gave consent. Consistent with these decisions, in my opinion a court could conclude that construing the provisions of Section 16-11-700 to include unsolicited newspapers and advertising circulars deposited on driveways would be violative of the First Amendment.

When interpreting the meaning of a statute, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken and statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984); Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966). Moreover, a statute must be interpreted with common sense to avoid an absurd result or unreasonable consequences. United States v. Rippetoe, 178 F.2d 735 (4th Cir. 1949); Ops. Atty. Gen. dated June 15, 2004 and May 20, 2004. A sensible construction, rather than one which leads to irrational results, is always warranted. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964). Additionally, as noted by an opinion of this office dated April 10, 1985 dealing with another question regarding Section 16-11-700, because such provision is a criminal statute, it must be strictly construed against the State.

By Section 16-11-700 there is the prohibition of dumping, throwing, dropping, depositing, discarding or otherwise disposing of "litter or other solid waste". Therefore, it is apparent that "litter" as used in such provision is compared to "other solid waste". Courts in other jurisdictions have considered questions regarding what constitutes "litter" in instances similar to the situation addressed in your letter. In State v. Wood, 739 N.E.2d 410 (Ohio, 2000), the Ohio Court of Appeals reversed the conviction of a defendant for littering based on that individual's actions in distributing newspapers that were delivered free of charge to all residents without subscription. The defendant had been observed driving her vehicle with the cargo door open while her nephew tossed copies of a newspaper to individual homes. The Court determined that newspapers and advertisements did not constitute "litter" at the time they were delivered to individual homes. In Miller, supra, the court determined that a newspaper was not "litter" where such term was defined as "trash, debris, rubbish, refuse, garbage or junk". 880 P.2d at 598. In an opinion dated August 3, 1994, the California Attorney General interpreted a statute making it unlawful to place "waste matter" on private property

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without the consent of the owner as not being applicable to weekly shoppers or other advertising fliers.

Consistent with these authorities, in my opinion, the legislature did not intend to include unsolicited newspapers and advertising circulars placed on driveways as being within the definition of "litter" as used in Section 16-11-700.

If there are any questions, please advise.

Sincerely,



Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General