



HENRY McMASTER
ATTORNEY GENERAL

November 27, 2006

The Honorable James E. Singleton
Sheriff, Oconee County
415 South Pine Street
Walhalla, South Carolina 29691-2145

Dear Sheriff Singleton:

In a letter to this office you indicated that a private citizen in your county has complained that a local newspaper company throws their advertising circular onto his driveway daily. Under your local county ordinance, a property owner must give due notice to newspaper publishers if they desire not to receive their publications. Once that notification is provided, the newspaper or advertisement becomes litter as defined in the ordinance.

The property owner has indicated, however, that the circulars are being thrown onto the state road right-of-way. According to your letter, fifty feet of right of way from the roadway center is owned by the State. The property owner contends that if the newspapers are being thrown within this right-of-way, then such activity is considered littering under the state statute regardless of the ordinance definition. Referencing the above, you have questioned the legality of newspaper or advertising circulars being thrown from a vehicle onto the right-of-way of roads.

A prior opinion of this office dated September 16, 2005 dealt with a similar issue. The precise question raised was whether unsolicited newspapers and advertising circulars placed on driveways constituted "litter" for purposes of the state statute regulating such. S.C. Code Ann. § 16-11-700 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), upon public or private property or waters in the State including, but 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.

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Criminal penalties are provided for such violations.

As expressed in the opinion, in questions such as these, First Amendment concerns are raised. That amendment prohibits laws that abridge the freedom of speech and the press. Reference was made in the opinion to the decision in Schneider v. New Jersey, 308 U.S. 147 (1939), where 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 had 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 a subsequent 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 "[w]hile 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. It is generally recognized that 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 prior opinion of this office referenced other court decisions which had also dealt with questions similar to that raised by you regarding the distribution of materials at residences. 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 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 (3rd Cir. 1982) similarly struck down on First Amendment grounds an ordinance that prohibited the distribution of advertising material at a residence, on other property or on the mail box unless the resident requested the material or gave consent.

Consistent with these authorities, the referenced prior opinion of this office concluded that 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.

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That opinion also dealt with the question of whether the General Assembly intended to include unsolicited newspapers and advertising circulars placed on driveways as being within the definition of "litter" as used in Section 16-11-700. The opinion noted that

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.

The opinion recognized that pursuant to Section 16-11-700, there is the prohibition of dumping, throwing, dropping, depositing, discarding or otherwise disposing of "litter or other solid waste". Therefore, the opinion concluded that the term "litter" as used in such provision is compared to "other solid waste".¹

¹"Solid waste" is defined by Section 44-96-40(46) for purposes of Section 16-11-700 as "...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 Carolina Mining Act, including processed mineral waste, which will not have a significant adverse impact on the environment.

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It was noted that courts in other jurisdictions and at least one attorney general in an opinion had considered questions regarding what constitutes "litter" in instances similar to the situation referenced above. 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 similarly 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 without the consent of the owner as not being applicable to weekly shoppers or other advertising fliers.

Consistent with such authorities, the prior opinion of this office concluded that 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. As a result, in the opinion of this office the newspapers or advertising circulars referenced in your letter being thrown on the right-of-ways of roads in your county should similarly probably not be considered "litter" for purposes of laws regulating such, especially in light of First Amendment concerns. Therefore, it does not appear that it would be illegal for the newspaper company to distribute its advertising circular in the manner referenced above.

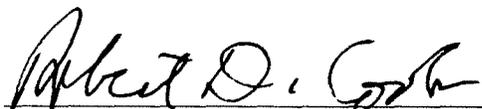
With kind regards, I am,

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
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