



ALAN WILSON
ATTORNEY GENERAL

June 22, 2012

The Honorable Anne J. Johnston
Mayor, Town of St. George
P.O. Box 904
St. George, South Carolina 29477

Dear Mayor Johnston:

You have inquired whether the Town of St. George may adopt an ordinance stating that the costs of abating the conditions of “deteriorating structure and abandoned overgrown lots” borne by the Town will be “added to annual property taxes [and] must be paid along with the taxes and remitted to the Town by the county.” Your proposed ordinance would further state that “[i]f taxes and this fee are not paid, the property [would] be offered at a tax sale.”

Analysis

Sections 5-7-80 (2004) and 31-15-10 *et seq.* (2007) of the South Carolina Code are directly on point. Section 5-7-80 provides:

- (1) Any municipality is authorized to provide by ordinance that the owner of any lot or property in the municipality shall keep such lot or property clean and free of rubbish, debris and other unhealthy and unsightly material or conditions which constitute a public nuisance.
- (2) The municipality may provide by ordinance for notification to the owner of conditions needing correction, may require that the owner take such action as is necessary to correct the conditions, may provide the terms and conditions under which employees of the municipality or any person employed for that purpose may go upon the property to correct the conditions and may provide that the cost of such shall become a lien upon the real estate and shall be collectable in the same manner as municipal taxes.

Section 31-15-30 provides in relevant part that a municipality “may adopt ordinances relating to the dwellings within such municipality which are unfit for human habitation.” Such ordinances may provide that, after an appropriate investigation and hearing as provided for by that section:

[T]he [designated or appointed] public officer . . . [may] issue and cause to be served upon the owner . . . an order . . . requiring the owner, within the time specified in the

order, to repair, alter or improve such dwelling to render it fit for human habitation or to vacate and close the dwelling as a human habitation or . . . requiring the owner, within the time specified in the order, to remove or demolish such dwelling . . . [and] if the owner fails to comply . . . the public officer may cause such dwelling to be repaired, altered or improved or to be vacated and closed . . . [or] may cause such dwelling to be removed or demolished; and . . . the cost of such repairs, alterations or improvements, vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which such cost was incurred and shall be collectible in the same manner as municipal taxes.

*Id.*¹

As the final clause of section 5-7-80 indicates, the Town may provide by ordinance that costs incurred pursuant to that section will be “collectable in the same manner as municipal taxes.” Likewise, section 31-15-30 provides that the costs incurred thereunder “shall be collectible in the same manner as municipal taxes.” We have interpreted this language as authority for a municipality to place such costs “onto municipal tax notices.” Letter to J. William Taylor, Op. S.C. Att’y Gen. (Dec. 17, 2003). However, if “a dwelling is removed or demolished” pursuant to section 31-15-10 *et seq.*, the materials of the dwelling must be sold and the proceeds credited “against the cost of the removal or demolition.” S.C. Code Ann. § 31-15-90.

In a recent opinion of this Office, we discussed the ability of a municipality to sell real property in response to a taxpayer’s failure to pay a municipal fee that was included on a property tax bill, concluding as follows:

[A] court likely would find municipal fees that constitute a lien on real property and are collectable in the same manner as taxes may be enforced by foreclosure or by a delinquent tax sale held pursuant to title 12, chapter 51 of the South Carolina Code.

Letter to The Honorable Bill Bowers, Op. S.C. Att’y Gen. (Apr. 24, 2012); *see also* S.C. Code Ann. § 5-7-300 (2004 & Supp. 2011) (concerning collection of delinquent municipal taxes). A copy of this opinion is enclosed for your reference.

As to the involvement of the county, we have opined previously that whether a county must collect clean-up costs of this kind on behalf of a municipality will depend upon the terms of any relevant contract between the municipality and the county. *E.g.*, Letter to C. Anthony Harris, Jr., Op. S.C. Att’y Gen. (Mar. 26, 2004) (“[I]t remains our opinion that the County would not be obligated to collect costs incurred by a municipality for the removal of trash and the demolition of houses absent a specific agreement to that effect between the County and the Town.”).

¹ The material quoted above is only a summary of the pertinent provisions of this statute. The full version of the statute and the corresponding chapter of the Code include detailed procedural protections for property owners that should be reviewed before adopting any ordinance pursuant to this authority.

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As a final matter, you have inquired whether a referendum would be necessary prior to adopting an ordinance of this kind. We are not aware of any reason a referendum would be required.

Conclusion

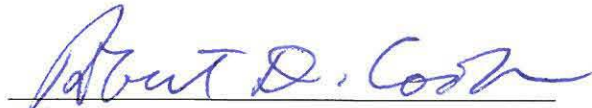
Sections 5-7-80 and 31-15-10 *et seq.* of the South Carolina Code provide direct authority for an ordinance of the kind you have described. Nothing in these statutes suggests a referendum would be required prior to the adoption of such ordinance. Whether a county must collect clean-up costs of this kind on behalf of a municipality will depend upon the terms of any relevant contract between the municipality and the county.

Very truly yours,



Dana E. Hofferber
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General