

The State of South Carolina



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February 6, 1986

C. David Stone, Sheriff
County of Pickens
P. O. Box 491
Pickens, South Carolina 29671

Dear Sheriff Stone:

In a letter to this Office you questioned whether the owner of private property may dispose of litter or other solid waste on his own property or give permission to others to dispose of waste on such property without a permit from the State Department of Health and Environmental Control (DHEC). As to your question you referenced Section 16-11-700 of the Code. Such provision states in part:

(n)o person shall dump, throw, drop, deposit, discard or otherwise dispose of litter or other solid waste upon any public property in the State or upon private property in this State or in the waters of this State whether from a vehicle or otherwise, including but not limited to any public highway, public park, beach, campground, forest land, recreational area, trailer park, highway, road, street or alley except:

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

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The violation of such provision is a misdemeanor offense. As you pointed out in your letter, such provision was amended in 1978 to include the reference to "private property." Previously, the provision prohibited in part the dumping of trash, without written permission, "on any property belonging to another." Act No. 173 of 1973.

Generally, where the language of a statute is clear and unambiguous, it should be applied literally. State v. Goolsby, 278 S.C. 52, 292 S.E.2d 180 (1982). Moreover, absent ambiguity, a statute must be applied according to the clear meaning of its language. Boyd v. State Farm, 260 S.C. 316, 195 S.E.2d 706 (1973).

Referencing the plain and specific language of Section 16-11-700, it appears that it was the intent of the General Assembly that the owner of private property be prohibited from disposing of litter or solid waste on his own property or permitting others to do so except as authorized in subsections (1) and (2). Support for such determination is found in Section 3 of Act No. 496 of 1978, of which Section 16-11-700 was a part, where it is stated that

(t)he purpose of this act is to accomplish litter control throughout this State by delegating to the Department of Health and Environmental Control the authority to conduct a continuous program to control, prevent and eliminate open dumps and litter from the State to the maximum practical extent. (Emphasis added.)

Moreover, such construction is consistent with the general principle that the depositing by a landowner on his own property of garbage and refuse of such a character as to potentially cause discomfort to others may be considered a nuisance. 58 Am.Jur.2d Nuisances Section 82 p. 647.

However, I would advise that in light of the fact that the General Assembly in enacting Section 16-11-700 has further regulated a practice which impacts on fundamental property rights, we would caution that you proceed with great care and deliberation and that any prosecutions be carefully considered before being initiated. For instance, at least one court has stated that the degree of littering should be considered before undertaking a prosecution. In State v. McCann, 354 N.W.2d 202 (1984), the South Dakota Supreme Court, in determining that in the case before it there was insufficient evidence to establish a violation of an antilittering statute, recognized the doctrine

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of de minimis non curat lex: "... the law does not call for, or take notice of, very small or trifling matters." 354 N.W.2d at 204. In its decision, the Court concluded that as in the case of People v. Feldman, 73 Misc.2d 824, 342 N.Y.S.2d 956 (1973) where a defendant was charged with littering for dropping two expended matches on the ground, the case before it was "... based on acts too trifling to warrant judicial condemnation."

I would further note that consistent with the Section 3 of Act No. 496 and subsection (1) of Section 16-11-700, DHEC has promulgated various regulations dealing with solid waste management. Among the regulations promulgated is Regulation 61-70 which deals with sanitary landfill design, construction and operation. Included in Regulation 61-70 is the provision which states:

(b)eginning July 1, 1972 no system for land disposal of refuse (solid waste) shall be operated in South Carolina without a written permit issued by the State Board of Health.

In reviewing your question, I spoke with an individual at DHEC. I was advised that DHEC similarly construes Section 16-11-700 as prohibiting a private property owner from disposing of litter or other solid waste on his own land or permitting others to do so without the approval of DHEC. In such circumstances however, typically, a permit from DHEC is not required but instead only formal approval by DHEC is necessary. I was informed that in such circumstances a representative from a district office reviews a proposed site to evaluate whether any dumping would present problems to the environment or other residences. If the conditions allow, approval is given. Only in circumstances where there is a need for continued monitoring of any dumping is a permit required. If there are any specific questions concerning such approval procedure, Mr. Jack Kendall at DHEC may be contacted at 758-5681.

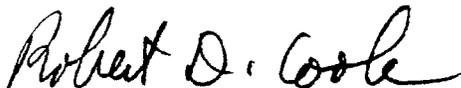
With best wishes, I am

Very truly yours,


Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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