

1980 S.C. Op. Atty. Gen. 59 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-29, 1980 WL 81913

Office of the Attorney General

State of South Carolina

Opinion No. 80-29

March 11, 1980

***1 SUBJECT: Ordinances, Pollution.**

A ban by a local authority on the transportation of hazardous wastes within its jurisdiction would be inconsistent with state and federal law and therefore preempted.

TO: City Attorney
Town of Summerton

QUESTIONS:

May the Summerton Town Council prohibit the transportation of hazardous wastes through the Town of Summerton?

AUTHORITIES:

[Section 44-56-10, et seq. of the 1976 Code of Laws of South Carolina](#), as amended; [42 U.S.C. § 6926 \(1976\)](#); [49 U.S.C. § 1811 \(1976\)](#); [44 Fed. Reg. 34,305 \(June 14, 1979\)](#); [Rollins Environmental Services v. Iberville Parish Police Jury, 371 So. 2d 1127 \(La. 1979\)](#); [City of Charleston v. Jenkins, 243 S.C. 205, 133 S.E. 2d 242 \(1963\)](#); [City of Lynchburg v. Dominion Theatres, 175 Va. 35, 7 S.E. 2d 157 \(1940\)](#); [56 Am.Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions.](#)

DISCUSSION:

You have asked whether a municipal ordinance prohibiting the transportation of hazardous wastes through the Town of Summerton would be valid. It is our opinion that it would not.

The South Carolina Hazardous Waste Management Act ([§ 44-56-10, et seq.](#) of the 1976 Code of Laws of South Carolina, as amended) charges the South Carolina Board of Health and Environmental Control with the responsibility for protecting the public health and safety ‘from the effects of improper, inadequate or unsound management of hazardous wastes.’ [§ 44-56-30](#). To carry out this responsibility, the Department is authorized to prescribe ‘standards for the transportation, containerization, and labeling of hazardous wastes.’ *Id.* Therefore, primary responsibility for regulating the management of hazardous wastes and for developing and enforcing a state-wide plan for hazardous waste management is vested in the Department.

As a general rule, local laws may be given effect so long as they are not inconsistent with applicable state or federal law. [City of Charleston v. Jenkins, 243 S.C. 205, 133 S.E. 2d 242 \(1963\)](#). An absolute prohibition by a municipality of the transportation of hazardous wastes through corporate limits would appear to be inconsistent with the intent of the Hazardous Waste Management Act, which contemplates regulation through a permitting system at the state level. The applicable rule, therefore, is that any local ordinance prohibiting an activity expressly permitted by the State must fail. See [City of Lynchburg v. Dominion Theatres, 175 Va. 35, 7 S.E.2d 157 \(1940\)](#); [56 Am.Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 374.](#)

The federal government has also acted in the field of hazardous waste management. Section 3006 of the Resource Conservation and Recovery Act of 1976 ([42 U.S.C. § 6926](#)) specifically authorizes, subject to EPA approval, state hazardous waste programs

in lieu of federal regulations. The Act clearly contemplates comprehensive state planning which is equivalent to the federal program. Uncoordinated efforts by numerous local authorities will not satisfy the requirements of the federal plan. See [EPA Proposed Consolidated Permit Regulations, 44 Fed.Reg. 34,305, June 14, 1979](#).

*2 In addition, Section 112 of the Hazardous Materials Transportation Act, providing for the regulation by the Department of Transportation (DOT) of hazardous materials in interstate commerce, expressly preempts any requirement of a State or political subdivision inconsistent with its own requirements, or with DOT regulations. 49 U.S.C. § 1811 (1976).

A case involving similar problems was decided last year by the Louisiana Supreme Court in [Rollins Environmental Services v. Iberville Parish Police Jury, 371 So. 2d 1127 \(La. 1979\)](#). A Louisiana Parish ordinance barring local disposal of hazardous wastes was found to be inconsistent with both state and federal regulatory schemes. While there are notable distinctions between the Louisiana case and this situation, the reasoning of the Louisiana court is applicable and persuasive in recognizing the need for coherent and comprehensive planning at the state and federal levels, coupled with the enactment of laws at both levels dealing with hazardous wastes. Accordingly, the field was found to have been preempted from local regulation.

At this time, permanent regulations in this area have been approved by the Board of Health and Environmental Control and are under consideration by the General Assembly. Emergency regulations are currently in effect until March 19, 1980. The orderly and safe transportation of these materials clearly is a vital part of a state-wide plan.

CONCLUSION:

Therefore, it is the opinion of this Office that a local ban on the transportation of hazardous wastes would be invalid as being inconsistent with state and federal law and therefore preempted.

Richard P. Wilson
Assistant Attorney General

1980 S.C. Op. Atty. Gen. 59 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-29, 1980 WL 81913