

1978 S.C. Op. Atty. Gen. 156 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-124, 1978 WL 22592

Office of the Attorney General

State of South Carolina

Opinion No. 78-124

June 21, 1978

***1 SUBJECT: Pollution**

The Dorchester County ordinance prohibiting the dumping or disposal within Dorchester County of solid waste generated outside the county is invalid insofar as it conflicts with general state law regarding hazardous waste management.

TO: Hartsill Truesdale, P.E.
Director
Division of Solid Waste Management
Bureau of Special Environmental Programs

QUESTION PRESENTED:

May Dorchester County lawfully enact an ordinance prohibiting the importation and disposition in that county of solid waste generated from without?

AUTHORITIES CITED:

S. C. Hazardous Waste Management Act of 1978 (R.479); [Sections 44-55-1210 and 44-55-1220 of the 1976 Code of Laws of South Carolina](#); [Miller v. Green](#), 134 SC 314, 132 SE2d 591 (1926); [Charleston v. Jenkins](#), 243 SC 205, 133 SE2d 242 (1963); [State v. Solomon](#), 245 SC 550, 141 SE2d 818 (1965); Dorchester County Ordinance Banning Importation of Solid and Hazardous Wastes; 56 AmJur2d, [Municipal Corporations](#), Section 374, p. 406; 1976 Opinions, Attorney General, No. 4520, p. 381.

DISCUSSION:

On March 14, 1978, Governor James B. Edwards signed into law the South Carolina Hazardous Waste Management Act (R.479). That Act charges the Department of Health and Environmental Control (hereafter, the Department) with the responsibility for protecting 'the health and safety of the public, the health of living organisms and the environment from the effects of improper, inadequate, or unsound management of hazardous wastes.' *Id.*, Section 3. The Department is specifically directed to prescribe a system 'to ensure that all such hazardous waste generated is designated for storage, treatment, or disposal in storage, treatment, or disposal facilities, other than facilities on the premises where the waste is generated, for which a permit has been issued' as elsewhere provided in the Act. *Id.*, Section 5.

The subject ordinance, on the otherhand, purports, to prohibit the 'dumping or disposal of solid waste generated outside the geographic limits of Dorchester County' within the county limits. Section 2 of the subject ordinance defines solid waste as being 'all types of garbage and refuse including normal household garbage and trash, commercial and industrial refuse and other such materials as would customarily be disposed of at dumps, public refuse containers and landfills.'

The South Carolina Hazardous Waste Management Act, in pertinent part, defines hazardous waste as follows:

. . . any waste, or combination of wastes, of a solid, liquid, contained gaseous, or semisolid form which because of its quantity, concentration, or physical, chemical, or infectious characteristics may in the judgment of the department:

- a. cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or,
- b. pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

*2 Such wastes may include, but are not limited to, those which are toxic, corrosive, flammable, irritants, strong sensitizers, persistent in nature, assimilated or concentrated in tissue, or which generate pressure through decomposition, heat or other means . . .

Counties by way of [Section 44-55-1210 of the 1976 Code of Laws of South Carolina](#) are authorized to engage the county, by ordinance or resolution, in solid waste collection and disposal. Moreover, [Section 44-55-1210](#) permits the county to promulgate rules and regulations as it may deem necessary to carry out the functions authorized therein. However, no mention is made as to importation bans specifically.

It is manifestly certain that the definition of hazardous waste in the state law above encompasses the solid waste material which is the subject of the Dorchester County ordinance. Accordingly, it appears that the subject ordinance is in conflict with general state law in this area inasmuch as the local ordinance attempts to further regulate that which general statewide legislation specifically governs. Here the ordinance expressly forbids the importation of substances which state law expressly permits.

In 1976 Op. A.G., No. 4520, p. 381, this Office expressed the opinion that a somewhat similar Cherokee County ordinance was invalid as contrary to the preemption of the field by the South Carolina Pollution Control Act. Therefore, it is clear, in our opinion, that the legislature has intended to preempt this area for statewide regulation, particularly in light of the most recent specialized legislation enacted just this year.

It has been noted that an ordinance in conflict with a state law of general character and statewide application is universally held to be invalid. 56 AmJur2d, [Municipal Corporations](#), Section 374, p. 406. The South Carolina Supreme Court has also recognized that principle, though to date only in municipal ordinance contexts. See [Miller v. Green](#), 134 SC 314, 132 SE2d 591 (1926); [Charleston v. Jenkins](#), 243 SC 205, 133 SE2d 242 (1963); [State v. Solomon](#), 245 SC 550, 141 SE2d 818 (1965). However, the principle espoused therein would most likely be applied in a similarly consistent manner to conflicting county ordinances as well as those arising under municipal authority.

CONCLUSION:

Therefore, it is the opinion of this Office that the Dorchester County ordinance is invalid insofar as it conflicts with general state law regarding hazardous waste management.

Richard P. Wilson
Assistant Attorney General

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