

1978 WL 35270 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 18, 1978

\*1 Honorable James M. Waddell, Jr.  
Senatorial District No. 15  
P. O. Box 1026  
Beaufort, South Carolina 29902

Dear Senator Waddell:

You have requested an opinion concerning the power of a county council to regulate uses of the foreshore (the area between mean high and mean low water mark on tidal beaches) as well as the waters below mean low water. The question does not concern zoning or land use regulation, procedures for which are set out in the 1977 Coastal Council Act, but rather concern such things as sailboating, surfboarding, and fishing.

The South Carolina Code does not expressly grant police power over these areas (which are state-owned lands) to counties. It does, however, in § 4-9-30 make a general grant of police power to counties. The question is whether this general grant carries with it, in the case of coastal counties, any authority over the foreshore and areas oceanward. There are relatively few cases on this subject. Perhaps the leading one is [Ross v. Edgewater](#), 115 N.J.L. 477, 180 A. 866 (1935). That case, in holding that a city's police power extended to the low water mark, states:

It is not to be presumed that the Legislature intended to withhold from this municipal corporation, designed to serve the needs, convenience, and comforts of its residents, powers necessary to attain those ends. Such a construction is in entire harmony with our scheme of government which employs the municipal corporation to supply the local needs of its residents. 180 A. at 871.

It is the opinion of this Office that this is the soundest view to take. This exercise of the police power would not operate to 'zone out' the State from any proposed activity, as had always been prohibited prior to a recent statutory change. Instead, it would merely provided regulation over those areas abutting the county which are vacant lands of the State and which the State had not itself sought to regulate. The opinion of this Office, therefore, is that as a general rule counties may regulate conduct at least down to the low water mark as a necessary adjunct to the general grant to them of police power.

As for the waters below mean low water mark, we have found no case which supports an extension of jurisdiction this far. §§ 5-7-140 and 5-7-150 expressly grant to municipalities the police power down to low water mark (§ 5-7-140) and, where a pier or other structure extends into the ocean, over that structure up to one mile beyond mean low water (§ 5-7-150). In another analogous situation, it is generally held even in the absence of statute that the territorial limits of a municipality extend only to the low water mark. 56 Am.Jur.2d Municipal Corporations, § 42. In view of the lack of authority, absent a statute, for an extension of county authority beyond mean low water, it is the opinion of this Office that no such authority may be asserted.

One other problem also exists. Your letter mentions the possibility of regulating fishing equipment. Since the regulation of fishing is broadly covered by state law, any county ordinance would have to be consistent with state legislation.

\*2 Finally, it should be noted that the best way to handle this problem would be by the enactment of state legislation which expressly grants to the counties some specific quantum of police power over the above areas. Unless or until this is done by the General Assembly, it cannot be said that the matter is entirely free from doubt.

Sincerely yours,

Kenneth P. Woodington  
Assistant Attorney General

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