

1976 S.C. Op. Atty. Gen. 353 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4496, 1976 WL 23113

Office of the Attorney General

State of South Carolina

Opinion No. 4496

October 18, 1976

*1 Joseph H. Earle, Jr., Esquire
Greenville County Attorney
First Federal Bldg., Suite 400
301 College Street
Greenville, South Carolina 29601

Dear Mr. Earle:

You have requested an opinion from this Office as to whether or not the Greenville County Council can create bird sanctuaries by ordinance. In my opinion, it cannot under the present provisions of Act No. 283 of 1975, the 'home rule' legislation.

The authority to enact ordinances is granted to county governing bodies by § 14-3703(14), CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended (Cum. Supp.), which reads in part:

to enact ordinances for the implementation and enforcement of the powers granted in this section and provide penalties for violations thereof not to exceed the penalty jurisdiction of magistrates' courts.

Section 14-3703 of the Code (Cum. Supp.) enumerates the powers delegated to the counties but does not contain an express grant of the police power. *Cf.*, §§ 47-32 and 47-37, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended (Cum. Supp.). Nor does it contain an express grant of the power to protect wildlife within the boundaries of a county. Indeed, the protection of wildlife may well be an area in which the State has pre-empted counties from acting. The provisions of Section 28-511 of the Code, as well as the amendments thereto, would certainly seem to indicate as much. The fact that the Wildlife Resources Commission has seen fit to engraft a 1000-acre minimum on such sanctuaries would not prevent the subdivision developer from enlarging his proposed area to the minimum number of acres by seeking the support of neighboring landowners.

At any rate, I am of the opinion that the Greenville County Council cannot enact an ordinance establishing a bird sanctuary unless and until it is specifically so authorized by an amendment to Act No. 283 of 1975, general in form [*see, e.g.*, Act No. 601 of 1976], or by a general law such as Act No. 886 of 1974 [58 STAT. 1941 (1974)].

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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