

1976 S.C. Op. Atty. Gen. 381 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4520, 1976 WL 23137

Office of the Attorney General

State of South Carolina

Opinion No. 4520

November 17, 1976

**\*1 A Cherokee County ordinance which would prohibit the disposal of industrial solid waste in a disposal site previously permitted by the South Carolina Department of Health and Environmental Control would be construed as void if challenged in the Courts of the State of South Carolina.**

Cherokee County Attorney

You have inquired whether or not Cherokee County might enact an ordinance which would prohibit importation and disposal of industrial waste within Cherokee County and which would forbid disposal of such waste in a disposal area already permitted by the South Carolina Department of Health and Environmental Control (hereinafter referred to as DHEC). As I interpret the factual situation, the question to be answered is whether or not a local government may lawfully forbid an act expressly permitted by the South Carolina Department of Health and Environmental Control.

DHEC has broad powers with respect to solid waste management, under the Pollution Control Act, which is codified in Sections 63–195 through 63–195.36 of the South Carolina Code of Laws, 1962, as amended. Section 63–195.1 grants to DHEC the power to “prepare and develop a general comprehensive program for the abatement, control and prevention of air and water pollution.” To carry out this mandate, Section 63–195.6 grants to DHEC the authority to promulgate rules and regulations. Pursuant to this authority, the Pollution Control Authority, one of DHEC's predecessor agencies, did on March 8, 1972, promulgate Regulation PC–SW–2, its Regulation Requiring Minimum Standards for Industrial Solid Waste Disposal Sites and Facilities. This regulation provides a comprehensive approach to the disposal of industrial solid waste in the State of South Carolina, by providing for permitting of such disposal sites after an evaluation of the site, the type of waste to be disposed of, the methods of disposal, and the source of such waste.

In light of DHEC's broad and pervasive regulation of industrial solid waste, it is doubtful that the courts of this State would uphold a county ordinance which would in effect invalidate a properly issued DHEC permit for an industrial solid waste disposal area. It should be pointed out, however, that this opinion is of necessity highly conjectural, inasmuch as no actual ordinance has been drawn. Moreover, there has been very little litigation in this particular area, making it extremely difficult to predict how the courts would handle this factual situation.

The conclusion that such an ordinance would fail is bottomed upon several general theories. The first of these is that the General Assembly, with its broad delegation of authority in the area of pollution control to DHEC, has evidenced an intent that DHEC shall be sole authority in the area of pollution abatement, thus effectively preempting the field. DHEC in turn by promulgating broad and comprehensive regulations in the area of industrial solid waste, has further preempted the field, leaving no room for the counties to operate in the area of industrial solid waste.

**\*2** Another reason whereby a court might strike down such an ordinance is that it has traditionally been held that local ordinances which conflict with the general law of a state cannot stand. (56 AmJur2d, Municipal Corporations, Section 374 (1971)). Although this question has never arisen in South Carolina where a county ordinance was concerned, it has been held that municipalities are powerless to prohibit by ordinance “that which the state authorizes, directs, requires, licenses, or expressly permits ...” (*Law v. Spartanburg*, 146 S.E. 12 (1928)).

The final and most persuasive authority against the enactment of such an ordinance is found in Section 14-3703 of the Code, as amended, which is a part of the legislation commonly known as the “Home Rule Act.” Subsection (14) of this section empowers counties to “enact ordinances for the implementation and enforcement of the powers granted in this section ...” In reviewing the other provisions of the Home Rule Act, no specific authority for counties to regulate industrial solid waste is apparent. Therefore, any county authority for enacting solid waste ordinances would come from Subsection (17) of 14-3703, which grants counties authority “to exercise such other powers as may be authorized for counties by the general law.” A search of general law provisions has revealed no authority whereby a county is empowered to enact ordinances concerning the disposal of industrial solid waste. It therefore follows that such an ordinance could be regarded as ultra vires by the courts.

For the foregoing reasons, it is the opinion of this Office that a Cherokee County ordinance which would prohibit the disposal of industrial solid waste in a disposal site previously permitted by the South Carolina Department of Health and Environmental Control would be construed as void if challenged in the courts of this State.

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