

1975 S.C. Op. Atty. Gen. 192 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4118, 1975 WL 22414

Office of the Attorney General

State of South Carolina

Opinion No. 4118

September 16, 1975

\*1 Act No. 283 of 1975, the 'home rule' legislation, does not grant to counties the authority to pass ordinances for the regulation of noise pollution and to provide penalties for the violation thereof.

TO: Joseph H. Earle, Jr.  
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#### QUESTION PRESENTED

Does Act No. 283 of 1975 grant to counties the power to pass ordinances for the regulation of noise pollution and to provide penalties for the violation thereof? CASES, STATUTES, ETC., INVOLVED

Act No. 487 of 1967 [55 STAT. Act No. 487 at 863 (1967)].

Act No. 283 of 1975.

[Williams v. Wylie](#), 217 S.C. 247, 60 S.E.2d 586 (1950).

[Park v. Greenwood County](#), 174 S.C. 35, 176 S.E. 870 (1934).

#### DISCUSSION OF ISSUES

A county has only such powers and can perform only such duties as are expressly or impliedly conferred or imposed upon it by constitutional or statutory provisions. . . . A county is a quasicorporation \* \* \* and a governmental agency of the State, \* \* \* with no independent sovereignty, and any powers not expressly conferred upon it are just as plainly prohibited as though expressly forbidden. [Williams v. Wylie](#), *supra* at 251.

In [Park v. Greenwood County](#), *supra*, the Supreme Court further stated:

The corporate purpose of a township, therefore, is to discharge such governmental functions as may be committed to it by the General Assembly in an effort to promote tie prosperity, safety, convenience, health and common good of its inhabitants. . . .

It would seem clear and we so hold, that if a township, a subdivision of a county created under the same constitutional article, is given these board powers, certainly a county, embracing several townships, may be granted similar powers by the General Assembly.

Section 47–32 of Act No. 283 of 1975 grants to municipalities the power to enact ordinances respecting any subject as shall appear to them necessary and proper for the security, general welfare and convenience of such municipalities or for preserving health, peace, order and good government therein, including . . . the authority to abate nuisances . . . .

This section contains an express grant of the police power to municipalities, empowering them to pass necessary and proper ordinances respecting the general welfare.

On the other hand, the grant of ordinance making power to counties is found in Section 14-3703(14) which authorizes counties:

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 enumerates the powers delegated to the counties but does not contain an express grant of the police power. Nor does it contain an express grant of the power to regulate noise pollution or to abate nuisances. Moreover, such a grant by implication is also unlikely in view of the type of authority that is delegated to the counties. Most grants of authority to counties found in Section 14-3703 empower counties to 'provide for' or 'make appropriations for' the various functions and operations of the county. For example, a county may provide for the public health and public safety by channeling tax money into those areas, but whether this authority can be construed to include by implication the power to regulate noise pollution is doubtful.

\*2 Perhaps the only authority that could be construed so as to empower counties to regulate, indirectly, noise pollution is Section 14-3703(9) to the extent that it incorporates Act No. 487 of 1967 (An Act To Authorize Municipalities And Counties To Establish Planning Organizations And To Undertake Social and Regional Comprehensive Planning Programs, Including Zoning, Land Subdivision Development and Preparation Of Official Maps). See, 55 STAT. Act No. 487 at 863 (1967). Any regulation of noise carried out pursuant to Act No. 487 of 1967, however, would have to be incidental to a zoning ordinance passed under that Act and, consequently, might not provide an effective means of regulation.

## CONCLUSION

The opinion of this office is, therefore, that Act No. 283 of 1975 does not grant to counties the authority to pass ordinances for the regulation of noise pollution and to provide penalties for the violation thereof.

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