

1974 S.C. Op. Atty. Gen. 45 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3696, 1974 WL 21215

Office of the Attorney General

State of South Carolina

Opinion No. 3696

January 21, 1974

*1 Mr. Lachlan L. Hyatt

Chairman

South Carolina Department of Health and Environmental Control

Post Office Box 4088

Spartanburg, South Carolina 29303

Dear Mr. Hyatt:

The Charleston County Health Department was created in 1940 and is among 25 counties having county boards of health. The general powers and duties of the Charleston County Board are (Sections 32–141, *et seq.*):

1. To employ a county health officer who, subject to the approval of the County Board, may employ necessary personnel.
2. To establish a merit system governing appointments and promotions.
3. To make rules and regulations for the promotion of health and the prevention of disease in Charleston County.
4. To extend funds appropriated to the County Board.

Of all the statutorily created county boards of health, only four of such boards appear to be created without the use of the language ‘under the direction and control of the State Board of Health.’ This significant omission strongly indicates that the supervisory and controlling power of the Charleston County Board was not intended to be placed in the State Board of Health. The successor to the powers of that Board is the Department of Health and Environmental Control.

Language in other statutes relating to the State Board of Health does not appear to provide a basis for supervisory control of the Charleston County Board. Municipal boards of health are all subject to the State Board of Health and ‘local boards of health in the several counties in the State outside of incorporated towns and cities’ are subject to the supervisory control of the State Board of Health (Sections 32–61, 101). A ‘local board of health’ as used in the statute is not a statutorily created body, such as the Charleston County Health Department. The local boards are created by the State Board of Health upon a written request of a designated number of qualified electors and the boards thus created are an entirely different organization from such boards as the Charleston Board.

In my opinion, the Charleston County Board of Health is an autonomous body and is not subject to the direct supervision and control of the Department of Health and Environmental Control. The ultimate authority from a Statewide standpoint, however, remains in the Department of Health and Environmental Control. Section 32–2 makes that board the ‘sole advisor of the State in all questions involving the protection of the public health within its limits.’ It was apparently not contemplated when this statute was first enacted in 1878 that autonomous county boards of health would be created. Instead, municipalities were authorized to create municipal boards of health which were expressly made subject to the supervision and control of the State Board of Health. Additionally, local boards of health could be created by the State Board of Health where needed and were all subject to the supervision and control of the State Board of Health. The clear intent of the original, long-standing statute was to place matters of health throughout the entire State under the supervision and control of the State Health Department and I do not feel that the enactment

of statutes, in at least four instances, establishing county boards of health and omitting in such statutes any references to supervisory control of the State Board of Health, can be construed to create within the State enclaves devoid of any Statewide jurisdiction and authority. The problems of health protection, in short, do not stop at county lines. It is my opinion therefore that the creation of the Charleston County Board of Health did not render the authority of the Department of Health and Environmental Control impermissible within the confines of Charleston County.

*2 To reconcile the powers of the two entities is difficult but, in my opinion, it can reasonably be stated as follows:

The State Board of Health may act in accordance with its rules and regulations promulgated pursuant to its general power and enforce the same anywhere within the state. Section 32–8. The Charleston County Board has authority, through its rule-making power, ‘for the promotion of health and the prevention of disease within Charleston County.’ If a conflict should occur between the regulations imposed by the Charleston County Board and the rules or regulations of the Department of Health and Environmental Control, the provisions of the Department of Health and Environmental Control would govern and control. The Charleston County Board may enact rules and regulations, enforce the same, and exercise any authority vested in it under its statutory powers; the State Board of Health may enforce its rules and regulations in Charleston County and exercise any authority vested in it, and if there should occur any conflict or inconsistency between the two, the action of the Department of Health and Environmental Control is, in my opinion, superior.

The South Carolina Department of Health and Environmental Control does have preemptive authority in the areas of air and water pollution control as provided for in Sections 63–195, *et seq.* (The South Carolina Pollution Control Act). The Act requires the agency charged with its administration (now the Department of Health and Environmental Control) to ‘adopt standards and determine what qualities and properties of water and air shall indicate a polluted condition’ and make such standards a part of their rules and regulations (Section 63–195.7). The Department is given the power to ‘[prepare and develop a general comprehensive program for the abatement, control, and prevention of air and water pollution’ (Section 63–195.8(9)). It is further provides that:

‘The Pollution Control Authority shall be the agency of State government having jurisdiction over the quality of the air and waters of the State of South Carolina. They shall develop and enforce such standards as may be necessary governing emissions or discharges into the air, streams, lakes or coastal waters of the State, including waste water discharges.

‘The State Board of Health shall be the agency of State government having jurisdiction over those matters involving real or potential threats to the health of the people of South Carolina, including the handling and disposal of garbage and refuse, septic tanks, and individual or privately owned systems for the disposal of offal and human or animal wastes.’

In addition to the pervasiveness of the Pollution Control Act with regard to the area of pollution control, the intention for the Act to preempt the field is further evidenced by the specific provisions of Section 63–195.34 which allows for the creation of local air pollution control programs. Such programs are, however, to ‘be formulated in accordance with standards and procedures adopted by the [Pollution Control] Authority, and shall be subject to periodic review by the Authority, which shall have the power to invalidate such programs if found to be unsatisfactory.’ There is no provision in the Act allowing such local programs for water pollution control or any other program administered under the Act.

Very truly yours,

*3 Daniel R. McLeod
Attorney General

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