

## SOUTH CAROLINA

### CONSTITUTIONAL AND STATUTORY PROVISIONS

#### **South Carolina Constitution**

- Art. 8, § 17. Construction of Constitution and laws.

The provisions of this Constitution and all laws concerning local government shall be liberally construed in their favor. Powers, duties, and responsibilities granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution.

#### **South Carolina Statutes**

- S.C. CODE ANN. § 4-9-25 (2017). Powers of counties.

All counties of the State, in addition to the powers conferred to their specific form of government, have authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of these powers in relation to health and order in counties or respecting any subject as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order, and good government in them. The powers of a county must be liberally construed in favor of the county and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties.

- S.C. CODE ANN. § 5-7-30. Powers conferred upon municipalities; surtax for parking spaces

Each municipality of the State, in addition to the powers conferred to its specific form of government, may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general laws of this State, including the exercise of powers in relation to roads, streets, markets, law enforcement, health, and order in the municipality or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it...

---

#### HOME RULE STRUCTURE, INCLUDING LACK OF IMMUNITY FROM STATE PREEMPTION

It was not until 1973 that the citizens of South Carolina amended the 1895 state constitution to define and expand the powers of local governments. Article 8, section 17 provides that “all laws concerning local government shall be liberally construed in their favor,” thus repudiating the Dillon’s Rule canon of construction. While requiring the General Assembly to create home rule, the amendments to the constitution “essentially left it up to the General Assembly to decide what

powers local governments should have,” while imposing certain requirements and limits.<sup>1</sup> Pursuant to this mandate, the legislature enacted statutes that recognized “broad” home-rule authority in both cities and counties, including grants of the police power.<sup>2</sup> The delegations of power to cities and counties are conditioned on their enactments not conflicting with the state constitution or “general law.” Hence, all local enactments are subject to preemption by general law. I did not find cases in which cities had argued that a potentially preemptive law was not “general.” Looking to another provision of the state constitution that prohibits special legislation directed at “a specific county,” however, the South Carolina Supreme Court has invalidated state laws that seek to re-organize a county’s affairs.<sup>3</sup>

South Carolina recognizes both express and implied preemption. Express preemption occurs when the General Assembly declares in express terms its intention to preclude local action in a given area.<sup>4</sup> Implied conflict preemption occurs “when the ordinance hinders the accomplishment of the statute’s purpose or when the ordinance conflicts with the statute such that compliance with both is impossible.”<sup>5</sup> “Additional regulation that merely supplements state law does not result in a conflict.”<sup>6</sup> For a statute and an ordinance to conflict with each other, they must both “contain either express or implied conditions which are inconsistent or irreconcilable with each other.”<sup>7</sup>

Under implied field preemption, an ordinance is preempted when the state statutory scheme so thoroughly and pervasively covers the subject so as to occupy the field or when the subject mandates statewide uniformity.<sup>8</sup> The latter criterion is notable insofar as it allows the judiciary to decide on its own, without necessarily relying on legislative input, whether a particular field should be regulated in uniform fashion.<sup>9</sup> By contrast, “[w]here the General Assembly specifically recognizes a local government’s authority to enact local laws in the same field, the statutory scheme does not evidence legislative intent to occupy the entire field of regulation.”<sup>10</sup> To preempt an entire field, an act must make manifest a legislative intent that no other enactment may touch upon the subject in any way.<sup>11</sup>

---

<sup>1</sup> *Hospitality Ass’n of S.C., Inc. v. Cty. of Charleston*, 320 S.C. 219, 226 (S.C. 1995)

<sup>2</sup> *Id.* at 227

<sup>3</sup> *See, e.g., Pickens Cty. v. Pickens Cty. Water & Sewer Auth.*, 439 S.E.2d 840 (S.C. 1994) (invalidating state law consolidating a county’s water and sewer authority into one entity under S.C. Const. art. VIII, § 7). Article VIII, § 7 states in relevant part: “No laws for a specific county shall be enacted and no county shall be exempted from the general laws or laws applicable to the selected alternative form of government.”

<sup>4</sup> *See, e.g., Wrenn Bail Bond Serv., Inc. v. City of Hanahan*, 515 S.E.2d 521 (S.C. 1999).

<sup>5</sup> *Sandlands C & D, LLC v. Cty of Horry*, 716 S.E.2d 280, 288 (S.C. 2011) (quoting *S.C. States Port Auth. v. Jasper Cty.*, 629 S.E.2d 624, 630 (S.C. 2006)).

<sup>6</sup> *Sandlands*, 716 S.E.2d at 288 (citing *Denene, Inc. v. City of Charleston*, 574 S.E.2d 196, 199 (S.C. 2002)).

<sup>7</sup> *Sandlands*, 716 S.E.2d at 288 (quoting *Denene*, 574 S.E.2d at 199).

<sup>8</sup> *Aakjer v. City of Myrtle Beach*, 694 S.E.2d 213, 215 (S.C. 2010).

<sup>9</sup> *Id.* (holding that a city’s requirement of wearing a helmet and protective goggles for riding a motorcycle is impliedly preempted because of the need for uniformity in the field and the potential infringement on “a citizen’s freedom of movement throughout the State”).

<sup>10</sup> *Sandlands*, 716 S.E.2d at 288.

<sup>11</sup> *Town of Hilton Head Island v. Fine Liquors, Ltd.*, 397 S.E.2d 662, 663 (S.C. 1990).