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Shumaker Statement on South Carolina Attorney General Opinion

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Today, the South Carolina Attorney General issued an opinion expressing the view that the Governor's emergency powers pre-empt emergency orders issued by local governments during a pandemic emergency. The opinion was requested by Representative Jeffrey Bradley (R- Beaufort). The opinion is linked [here](#).

The opinion does not address whether local ordinances directing business closures, stay-at-home orders, or beach closures are illegal. In fact, although not discussed in the opinion, South Carolina Code Section 5-7-250(d) grants local governments the ability to pass emergency ordinances to protect the life, health, safety, and property of citizens.

There are interesting arguments raised by the opinion. First, if the local orders do not contravene the Governor's orders, do these actions stand? Or, instead, does the Governor have the sole power to issue emergency orders and therefore, the local orders were made illegally?

In a tweet at the time of the opinion's release, Attorney General Alan Wilson stated that a "Governor's executive order during a state of emergency preempts local government ordinances." However, this statement is vague. Is this preemption only to the extent that the local orders and the Governor's orders clash? Are the local governments free to issue emergency orders to the extent the Governor has not addressed an issue?



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The answers to these questions may require the intervention of the courts. We expect that local governments may challenge the opinion. Of concern to local governments is the statement in the opinion that "counties and municipalities should be aware that any unauthorized exercise of such emergency powers could subject these political subdivisions to liability at the behest of a private citizen with requisite legal standing".

It is important to note that, while Attorney General opinions often shed light on interesting issues, they do not have the same precedential weight as court rulings.

The COVID-19 landscape is quickly shifting. We will keep you informed as circumstances change.

Please do not hesitate to contact Laura Dukes Beck at lbeck@shumaker.com or 843.996.1927 or Laura Evans at levans@shumaker.com or 843.996.1913 if you have questions.

For the most up-to-date legal and legislative information related to the coronavirus pandemic, please visit our Shumaker COVID-19 Client Resource Center at shumaker.com. We have also established a 24/7 Legal & Legislative Helpline at 1.800.427.1493 monitored by Shumaker lawyers around the clock.

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