



HENRY McMASTER  
ATTORNEY GENERAL

June 10, 2009

Captain David Nelson  
Tega Cay Police Department  
7705 Tega Cay Drive  
Tega Cay, South Carolina 29708

Dear Captain Nelson:

In a letter to this office you indicated that the City of Tega Cay passed an ordinance that requires vehicle parking stickers for parking at selected parks and recreational sites. You stated that the City charges all nonresidents a fee of \$150.00 for an annual parking sticker while residents of the City are not required to pay anything for the same parking privilege. You have questioned whether such distinction is lawful.

Generally, pursuant to Section 5-7-30 municipalities are authorized to enact regulations and ordinances

...not inconsistent with the Constitution and general law 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, including the authority to levy and collect taxes on real and personal property and as otherwise authorized in this section, make assessments, and establish uniform service charges relating to them....

An opinion of this office dated May 11, 1977 stated that “[g]enerally, the power to regulate parking has also been held to imply the power to exact a fee to cover the expenses incurred in such regulation; thus, ordinances making a charge for parking vehicles have been held a valid exercise of the municipality's police power.” Therefore, generally, a municipality may enact provisions requiring a charge for parking.

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As to the matter of discriminating between residents and nonresidents, generally, there is no right to bar a nonresident from a public park inasmuch as it has been held that a park is a public forum. Perry Educational Association v. Perry Local Educators' Association, 460 U.S. 37 (1983). However, in People ex rel. Village of Lawrence v. Kraushaar, 89 N.Y.S.2d 685 (1949), the court dealt with a city ordinance establishing parking fees at a railway station at one dollar a year for residents of the city and two nearby cities and ten dollars for all other individuals parking at the lot. While the court held that the ordinance impermissibly discriminated within a class, as to nonresidents, by having lower parking fees for nonresidents of two nearby cities, the court found that generally, it was reasonable for the village to establish two categories of parking users, residents and nonresidents, and treat them differently. The court held that the distinction between residents and nonresidents generally as to parking fees would not be in conflict with the equal protection clause. The court determined that the scheme before it erred when it deviated from the standard of equal treatment as to persons in the same class, that of nonresidents.

As referenced in a prior opinion of this office dated April 1, 2009, “[r]ational relation review is appropriate where “the classification..does not affect a fundamental right or classify on the basis of race, creed, color, gender, national origin, or legitimacy....” Another prior opinion dated September 7, 2007 stated that “[i]t is generally recognized that legislation which does not involve a fundamental right or involve a suspect class will be upheld against an equal protection challenge if it is rationally related to a legitimate government purpose.” In an opinion of the New York Attorney General dated February 6, 1989, it was noted that “[i]nasmuch as the ‘right’ to park an automobile is not a fundamental one, classifications which affect that right need only have a rational basis...[D]istinctions based on residency have a rational basis with regard to use a municipal parking facility.” See also: Op. Ohio Atty. Gen. dated July 31, 1984 (“[t]he class of nonresidents has not been found, in itself, to constitute a suspect group...The Constitution does not...presume distinctions between residents and nonresidents...to be invidious.”); Op. Alabama Atty. Gen. dated December 27, 2007 (a municipality may charge a higher fee to nonresidents for the use of a park); Op. Fla. Atty. Gen. dated October 2, 1987 (the Department of Natural Resources may put in place a fee schedule whereby nonresidents of the State are charged more for access and use of a state park than residents. The opinion noted that classifications based on residency involve no suspect class nor fundamental right).

Therefore, consistent with the above, in the opinion of this office, the City of Tega Cay’s ordinance which requires nonresidents to pay a designated fee for an annual parking sticker while not requiring the same of residents would be lawful.

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With kind regards, I am,

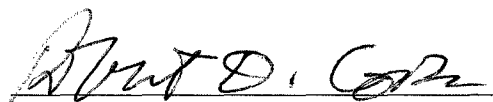
Very truly yours,

Henry McMaster  
Attorney General



By: Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General