



HENRY McMASTER
ATTORNEY GENERAL

June 28, 2010

James W. Peterson, Jr., Esquire
Florence City Attorney
City-County Complex AA
180 N. Irby Street
Florence, South Carolina 29501-3456

Dear Mr. Peterson:

In a letter to this office you referenced that the codes enforcement staff of the City of Florence has encountered problems regarding the use of a municipal summons to enforce its code provisions regarding nuisances within Florence. You stated that Sections 9-24 and 9-26 of the city code describe conditions of real property which are prohibited as nuisances within the City. Moreover, Section 9-25 provides that "it shall be unlawful for any person to keep or maintain any real property in a condition prohibited by this division." You further stated that

[i]n the process of enforcing these provisions, the City utilizes the municipal summons provided for under Section 6-13 of the City Code. This code section allows for the use of a municipal summons for violations of the provisions of the ordinances of the city...This ordinance clearly requires that the municipal summons be issued by the city employees or officials specifically authorized to do so by the city manager. The city is not seeking to change that process in any way. The issue at hand relates to the sentence found in Section 6-13(d) which provides "all municipal summons shall be served on behalf of the City by a law enforcement officer having such jurisdiction." (emphasis added).

In considering the issue, reference must also be made to S.C. Code Ann. § 56-7-80 which states in part:

(A) [c]ounties and municipalities are authorized to adopt by ordinance and use an ordinance summons as provided herein for the enforcement of county and municipal ordinances. Upon adoption of the ordinance summons, any county or municipal law enforcement officer or code enforcement officer is authorized to use an ordinance summons. Any county or municipality adopting the ordinance summons is

responsible for the printing, distributing, monitoring, and auditing of the ordinance summons to be used by that entity.

(B) The uniform ordinance summons may not be used to perform a custodial arrest. No county or municipal ordinance which regulates the use of motor vehicles on the public roads of this State may be enforced using an ordinance summons...

(D) Service of a uniform ordinance summons vests all magistrates' and municipal courts with jurisdiction to hear and dispose of the charge for which the ordinance summons was issued and served.

(E) Any law enforcement officer or code enforcement officer who serves an ordinance summons must allow the person served to proceed without first having to post bond or to appear before a magistrate or municipal judge. Acceptance of an ordinance summons constitutes a person's recognizance to comply with the terms of the summons. (emphasis added).

Also, pursuant to S.C. Code Ann. § 5-7-32, a municipality is authorized to "...appoint and commission as many code enforcement officers as may be necessary for the proper security, general welfare, and convenience of the municipality."

You indicated that the City has experienced difficulty serving summons on property owners maintaining property in a manner deemed to constitute a nuisance. Inasmuch as the city police department is not organized to devote sufficient manpower to the issuance of such summons, there is consideration of the possibility of hiring individuals who have been designated as constables under State statutory provisions to serve such summons. Referencing such, you have questioned whether or not such constables meet the requirement that the summons be served by a "law enforcement officer having such jurisdiction.

You also indicated that the City is considering amending Section 6-13 of the City Code to specifically allow a municipal summons, after being issued by city officials or employees designated by the city manager, to be served by a private process server who is not a state constable or law enforcement officer. You have questioned whether if such a change was made to the ordinance, would the ordinance comply with the requirements of Section 56-7-80.

In an opinion dated January 25, 1996, this office citing the decision of the State Supreme Court in State v. Luster, 178 S.C. 199, 182 S.E. 427 (1935) determined that "...state constables possess the authority of regularly commissioned peace officers, including the power of arrest." That opinion citing the decision in State v. Franklin, 80 S.C. 332, 338, 60 S.E. 953, 955 (1908) noted that "[o]ur Supreme Court has stated that constables perform all the duties of law enforcement officers and in particular 'a constable stands on the same footing as a sheriff.'" An opinion of this office dated May 20, 1996 determined that a sheriff is authorized to enforce a county ordinance.

As to the question of enforcement of ordinances generally, the May 20, 1996 opinion determined that

[c]ourts have generally held that local ordinances-municipal as well as county-constitute “criminal laws” of the State...When the words “laws of this state” are used, the generally accepted meaning is that these words include state statutes as well as municipal ordinances...As our Supreme Court has noted, by enacting home rule, the Legislature intended “to...restore autonomy to local government...Thus, within the respective spheres of the police power of counties and municipalities, the proper adoption of ordinances by these political subdivisions would be considered “criminal laws of this State.”

An opinion of this office dated January 12, 2009 concluded that a state constable would be authorized to enforce any criminal laws of this State which would include county ordinances.

Consistent with such, while a state constable would be generally be authorized to enforce an ordinance, such as the nuisance ordinance referenced above, Section 56-7-80 states, again, that

[c]ounties and municipalities are authorized to adopt by ordinance and use an ordinance summons as provided herein for the enforcement of county and municipal ordinances. Upon adoption of the ordinance summons, any county or municipal law enforcement officer or code enforcement officer is authorized to use an ordinance summons.....(emphasis added).

An opinion of this office dated May 23, 1995 determined that a town could appoint private security guards as code enforcement officers.¹ It was noted in the opinion that a security guard “...possesses the power of arrest upon the property he is employed to guard or patrol. Accordingly, we have concluded that a private security guard is a “law enforcement officer” on such property....”

Consistent with such recognition that a private security guard could serve as a code enforcement officer, in the opinion of this office, a state constable could likewise serve as a code enforcement officer for purposes of Section 56-7-80. Likewise, that state constable could, consistent

¹That opinion further stated that “[i]n conclusion, it is our opinion that your proposed contract whereby private security guards are appointed as code enforcement officers would be valid. So long as the municipality limits the duties of these officers to those set forth in Section 56-7-80, insures that such officers do not have the power of custodial arrest, and maintains sufficient supervision and control over these officers by virtue of...(a)...contract, we believe this arrangement would withstand scrutiny.”

Mr. Peterson
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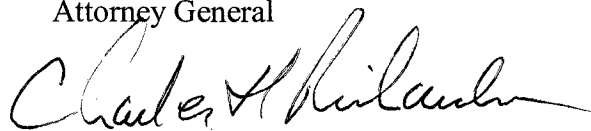
with your city ordinance, be specifically authorized to issue a summons by the city manager. Such service would, also, be consistent with the requirements of your Section 6-13(d) which provides "all municipal summons shall be served on behalf of the City by a law enforcement officer having such jurisdiction." In the opinion of this office, a state constable would have "such jurisdiction." Of course, consistent with Sections 5-7-32 and 56-7-80, that constable would appear to have to be "appointed and commissioned" as a code enforcement officer. I assume his commission could be limited to issuance of the particular nuisance summons. Also, it would be advisable that the State Law Enforcement Division be consulted inasmuch as that agency typically handles constables' commissions and provides, if necessary, any restrictions on such commissions.

For the reasons stated above which require that a municipal summons be issued by a law enforcement officer, in the opinion of this office, any amendment to specifically allow a municipal summons, after being issued by city officials or employees designated by the city manager, to be served by a private process server who is not a state constable or law enforcement officer would not be consistent with the requirements of Section 56-7-80.

If there are any questions, please advise.

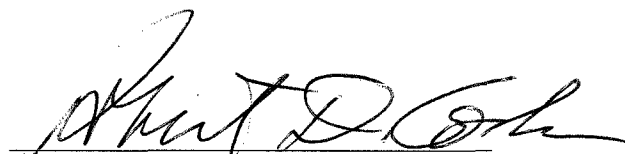
Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General