



HENRY McMASTER
ATTORNEY GENERAL

August 21, 2008

Chief George Morris
Bamberg Police Department
P. O. Box 300
Bamberg, South Carolina 29003

Dear Chief Morris:

In a letter to this office you questioned whether the Bamberg city ordinance prohibiting an open container can be enforced in a parking lot that is not posted pursuant to S.C. Code Ann. § 23-1-15. Such provision states:

[a]ny real property which is used as a parking lot and is open to use by the public for motor vehicle traffic shall be within the police jurisdiction with regard to the unlawful operation of motor vehicles in such parking lot.

Such parking lots shall be posted with appropriate signs to inform the public that the area is subject to police jurisdiction with regard to unlawful operation of motor vehicles. The extension of police jurisdiction to such areas shall not be effective until the signs are posted.

In any such area the law enforcement agency concerned shall have the authority to enforce all laws or ordinances relating to the unlawful operation of motor vehicles which such agency has with regard to public streets and highways immediately adjoining or connecting to the parking area.

You referenced a situation where an officer followed a driver into a parking lot of a grocery store and made an open container charge. According to the incident report, the driver was found to be grossly intoxicated with open half pints of liquor in the car. The driver was charged pursuant to Bamberg ordinance 05-01 which states:

[n]o person shall drink, or carry for the purpose of immediate consumption, beer, wine or any alcoholic beverages upon the streets, sidewalks, parks, public parking lots, public school property or other public property except where authorized or permitted by the owner or owners thereof. Any person carrying an open cup, can, glass, bottle or other similar drinking vessel containing beer, wine or any alcoholic beverages upon the streets, sidewalks, parks, public parking lots, public school property or other public property except where authorized by law, or upon any private parking lot or other private areas that are open to public use, except with the permission or

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consent of the owners or owners thereof, shall be in violation of this section. Any person who violates the provisions of this section shall be subject to a fine or imprisonment not exceeding thirty (30) days. (emphasis added).

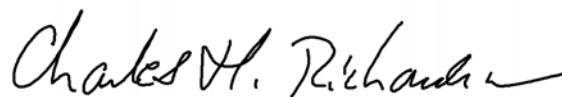
As set forth in an opinion of this office dated October 15, 2004, Section 23-1-15 referenced above states that as to the areas posted pursuant to that provision, “[i]n any such area the law enforcement agency concerned shall have the authority to enforce all laws or ordinances relating to the unlawful operation of motor vehicles which such agency has with regard to public streets and highways immediately adjoining or connecting to the parking area. (emphasis added). As the opinion concluded, pursuant to that provision, “...any offense ‘relating to the unlawful operation of motor vehicles’ can be cited in such circumstances.” See also: Ops. Atty. Gen. dated January 20, 1998 (Section 23-1-15 “...provides for the posting of private parking lots for enforcement of laws and ordinances regarding the unlawful operation of motor vehicles on public streets and highways so as to bring the lots within the jurisdiction of the police.”); August 15, 1995 (Section 23-1-15 “...entitles law enforcement officers to enforce all traffic offenses where the operation of a motor vehicle on a public highway is a required element of the offense. With respect to all other offenses, including ordinances or statutes relating to littering, etc., the fact that such offense occurs on private property, whether or not posted pursuant to Section 23-1-15, is irrelevant.”).

In the opinion of this office, Bamberg’s open container ordinance referenced above is not a law “...with regard to the unlawful operation of motor vehicles” in a parking lot as specified by Section 23-1-15. Instead, the ordinance prohibits the carrying of a container containing alcoholic beverages at various specified places including “...upon any private parking lot or other private areas that are open to public use, except with the permission or consent of the owners or owners thereof...” Therefore, in the opinion of this office, a parking lot would not have to be posted pursuant to such provision in order for the ordinance to be enforced.

With kind regards, I am,

Very truly yours,

Henry McMaster
Attorney General



Senior Assistant Attorney General



Assistant Deputy Attorney General