

6916 Liberty



The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLIE CONDON  
ATTORNEY GENERAL

August 14, 2000

The Honorable Timothy C. Wilkes  
Member, House of Representatives  
Box 127  
Winnsboro, South Carolina 29180

**RE: Informal Opinion**

Dear Representative Wilkes:

By your letter of April 18, 2000, you have asked the Office of the Attorney General for an opinion on the validity of South Carolina Code of Laws Sections 50-25-1210 and 50-25-1230, which prohibits certain types of motorboats on Lake Wateree as a method of noise control.

The statutes in question, S.C. Code Ann. §§ 50-25-1210 and 50-25-1230 provide as follows:

A motorboat operating upon waters on Lake Wateree shall comply with the following noise control requirements:

- (1) Motorboats with inboard-outboard propulsion machinery shall exhaust through the propeller.
- (2) Inboard motorboats with "V"-drives-jets or propeller propulsion machinery with exhaust through the transom must be water-cooled with a steady stream of water or exhaust underwater while under way or exhaust through an automotive sealed, baffle-type muffler for each exhaust stack, with exhaust openings not to exceed two inches in diameter. Boats with original propulsion machinery made before 1970 are exempt from the requirements of this item.
- (3) Motorboats and their propulsion machinery which exhaust over the transom shall exhaust through an automotive sealed, baffle-type muffler for each exhaust stack, with exhaust openings not to exceed two inches in diameter. Glass pack mufflers, resonators, and above-water open exhausts are prohibited for the motorboats. Baffle inserts are prohibited

*Request Letter*

The Honorable Timothy C. Wilkes  
August 14, 2000  
Page 2 of 3

on all inboard boats.

(4) Motorboats with outboard propulsion machinery shall exhaust underwater at all times unless designed or modified to exhaust above water and comply with the provisions of item (3).

S.C. Code Ann. §50-25-1210. Providing for the penalties of violating these requirements, Section 50-25-1230 reads:

The operator of a motorboat who violates any of the provisions of this article is guilty of a misdemeanor and, upon conviction, must be fined for a:

- (1) first offense not less than fifty nor more than two hundred dollars or imprisoned not more than thirty days;
- (2) second offense not less than one hundred nor more than two hundred dollars or imprisoned not more than thirty days;
- (3) third or subsequent offense not less than two hundred nor more than five hundred dollars or imprisoned not more than six months, or both.

You have expressed concern that "there seems to be no threshold established as to when the noise level is excessive." Specifically you ask: 1) if "Article 12 [can] legally prohibit certain types of boats, as provided in Section 50-25-1210" and 2) "With regard to noise control, is Section 50-25-1230 enforceable?"

There appears to be no South Carolina case law addressing these statutes. But as other courts have noted, "noise ordinances present a great deal of problems in drafting them and enforcing them because the nature of sound makes resort to broadly stated definitions and prohibitions not only common but difficult to avoid." State v. Taylor, 495 S.E.2d 413 (N.C. Ct. App. 1998) (citations omitted). Notwithstanding, in considering the constitutionality of an act of the General Assembly, it is presumed that the act is constitutional in all respects. Moreover, such an act will not be considered void unless its unconstitutionality is clear beyond any reasonable doubt. Thomas v. Macklen, 186 S.C. 290, 2 S.E.2d 777 (1939). All doubts of constitutionality are generally resolved in favor of constitutionality.

As Taylor indicated above, the most likely challenge to regulations imposed for noise control is that they are unconstitutionally vague. An act of the General Assembly is "void for vagueness if its prohibitions are not clearly defined." Grayned v. City of Rockford, 408 U.S. 104 (1972) Vague noise control ordinances implicate due process concerns in two ways: they may not give a person of ordinary intelligence a reasonable opportunity to know what exactly he is prohibited from doing and

The Honorable Timothy C. Wilkes  
August 14, 2000  
Page 3 of 3

they may impermissibly allow law enforcement to apply them in an arbitrary and discriminatory manner. See Asquith v. Beaufort, 911 F. Supp. 974 (D.C.S.C. 1995). However, neither of these concerns appear to be a danger here. Although § 50-25-1210 uses the terms "noise control" as the purpose for the requirements, the requirements themselves are by no means vague. Parts one through four of the statute clearly delineate what kind of machinery is impermissible on a motorboat on Lake Wateree, with the following § 50-25-1220 even providing an exception to these requirements for boats competing in regattas, parades, and tournaments. Rather than use broad terms subject to interpretation by law enforcement, the statutes instead specifically identify the activity prohibited. A person of ordinary intelligence would know with reasonable certainty the conduct rendering them liable to the criminal penalties of S.C. Code Ann. § 50-25-1230.

Based on the foregoing, it is the opinion of this Office that S.C. Code Ann. §§ 50-25-1210 and 50-25-1230 are not impermissibly vague and would withstand a constitutional challenge on those grounds. Of course, while this Office may comment upon any potential due process issues, it is solely within the province of the courts of this State to declare an act constitutional or unconstitutional.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General not officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Robert D. Cook  
Assistant Deputy Attorney General