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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

January 20, 1998

Sergeant Mark Mims
Police Department, City of Florence
City-County Complex, JJ
180 N. Irby Street
Florence, South Carolina 29501-3456

Re: Informal Opinion

Dear Sergeant Mims:

You have sought an opinion "regarding municipal police jurisdiction in parking lots that are open to public traffic within the city limits." Specifically, you have asked about enforcement of the City of Florence's Ordinance concerning Careless Operation of a Vehicle. By way of background, you state the following:

[a] motorist was cited for careless operation when she was involved in a collision. She was exiting a parking lane entering a main route through the parking lot. Her vehicle collided with another vehicle who appeared to have the right of way based on pavement markings. Our City Judge was of the opinion that the City of Florence had no jurisdictional authority to issue a citation on this case.

Law / Analysis

S.C. Code Ann. Sec. 5-7-110 bestows upon municipal police officers the authority to "exercise their powers on all private and public property within the corporate limits of the municipality ..." S.C. Code Ann. § 17-13-40 further provides that "police authorities of all towns and cities of this State may make arrests of all offenders against municipal ordinances and statutes of this State ...".

Request Letter

Furthermore, § 23-1-15 also states as follows:

Any 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.

With respect to § 23-1-15, this Office has consistently "opined that the statute 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." See, Ops. Atty. Gen., dated March 4, 1992; September 8, 1996; February 25, 1981. We have also opined that "the question of whether specific property is public or private is ... irrelevant as to certain traffic offenses." Op. Atty. Gen., October 5, 1985. In Op. Atty. Gen., Op. No. 92-45 (August 14, 1992), we stated that

[w]e have determined that Section 23-1-15 would have no effect on a traffic offense in which the commission on public property is not an element, such that certain traffic offenses may be committed and are enforceable on private property regardless of whether the property is posted. See Ops. Atty. Gen. dated May 21, 1980; September 29, 1975. For example, the offense of driving under the influence may be committed on private property even though it is not posted because operation of a motor vehicle on a public highway is not a required element of the offense. Op. Atty. Gen. dated April 22, 1985. See also Ops. Atty. Gen. December 23, 1974 (Reckless driving applies to offenses on private property even

though not posted as the presence of the offender on a public highway is not made an element); January 18, 1988 (Reckless homicide committed on private property); May 21, 1980 (A violation of the handicapped parking provision may occur on private property which is not posted because presence on a public highway is not an element of the offense).

The ordinances you provided, if considered traffic ordinances, do not require that the offense be committed on a public highway or street, therefore, posting of private property would not be necessary for the commission and enforcement of the act.

The Ordinance in question, prohibiting careless operation of a vehicle, provides:

[i]t shall be unlawful for any person to operate any vehicle without care and caution and full regard for safety or persons or property. Any person failing to do so shall be guilty of careless driving or riding. The operation of any vehicle when the same or any of its appliances is not in proper or safe condition shall be prima facie evidence of careless driving or riding. Careless operation is unlawful and may be a lesser included offense of "reckless driving." (Ord. No. 86-12 § 1, 3-3-86).

It is evident that the essence of the "Careless Operation" ordinance is the operation of "any vehicle without care and caution and full regard for safety of persons or property." Such Ordinance does not limit the offense to the careless operation upon the public highways. Moreover, the Ordinance specifically states that careless operation is "a lesser included ... [offense] of 'reckless driving.'" In an Opinion of this Office dated April 23, 1971, we stated that "[d]runk driving and reckless driving are offenses anywhere in the state, whether on a public highway or private property"

Based upon the foregoing, it would be my opinion that the police officers of the City of Florence would have jurisdiction to enforce the Careless Operation Ordinance regardless of whether a violation thereof occurred on the public highway or in a private parking lot.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney

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as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/an