

4814 Library

# The State of South Carolina



## Office of the Attorney General

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March 25, 1992

The Honorable Landon M. Louthian, Jr.  
Chief Judge  
Municipal Court of Hanahan  
P. O. Box 9278  
Hanahan, South Carolina 29410

Dear Magistrate Louthian:

In a letter to this Office you referenced a recently enacted ordinance for the City of Hanahan which reads:

It shall be unlawful for any person unless they are actively involved in the retrieval or launching of a water craft or fishing from the ramp to loiter at a public boat landing. This will be considered trespassing and/or loitering.

You asked whether such ordinance is written unduly restrictive as to a place where the public is invited. You stated

It would seem to prohibit crabbers and shrimpers from utilizing the facilities unless these activities are "fishing", as well as denying the public at large access unless they are "actively involved" in the permitted acts.

An opinion of this Office dated November 16, 1989 commented that generally as with a statute, an ordinance is entitled to a presumption of constitutionality. However, that opinion further stated:

substantive due process requires that an ordinance be definite and certain as to proscribe conduct so persons of ordinary intelligence do not have to guess at its meaning ... An ordinance must be clear, precise, definite, certain in its terms and an ordinance vague to the extent that its precise meaning cannot be ascertained is invalid.

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As to the trespassing ordinance at issue in that opinion, the opinion further stated:

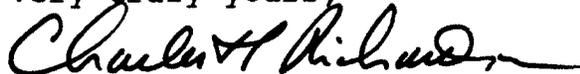
While only a court can declare a statute invalid, the city may encounter potential difficulty should the proposed ordinance be enacted and later challenged because the broad terms of the proposed ordinance may be overly vague when it makes criminal an innocent act ... and where it assesses criminal liability without requiring criminal intent. Criminal intent is a prerequisite for criminal liability....

Another prior opinion of this Office dated September 28, 1976 noted that loitering ordinances have been invalidated where the ordinance is so indefinite that it fails to "... give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute ... and because it encourages arbitrary and erratic arrests and convictions." The opinion commented that an ordinance is suspect where it "fails to adequately apprise one of when his conduct is forbidden by the ordinance" or "fails to set forth any ascertainable standard of guilt by which the police can judge the suspected person's conduct" or "fails to adequately distinguish between innocent conduct and criminal conduct."

As noted, only a court can conclusively determine whether a statute or ordinance is invalid or unconstitutional. However, as referenced, an ordinance that is not sufficiently definite and certain may be subject to challenge. Consideration may be given to the points outlined here in review of the referenced ordinance as to whether it is subject to challenge.

With kind regards, I am

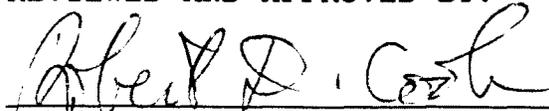
Very truly yours,



Charles H. Richardson  
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:



Robert D. Cook  
Executive Assistant for Opinions