

1983 WL 181908 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 8, 1983

**\*1 SUBJECT: Regulation of taxi cabs by the City of Newberry.**

The City of Newberry may, pursuant to the authority vested by [S. C. Code Ann. § 5-7-30](#) (1976, as amended), enact ordinances providing for the regulation of taxi cabs within the corporate limits of the city, as long as such ordinances are reasonable and designed to accomplish a purpose properly falling within the scope of its police power.

W. A. Harvey  
City Manager  
City of Newberry

QUESTION:

May the City of Newberry impose regulations on taxi cab companies operating within its corporate limits, and, if so, what type of regulations are permissible and what type are impermissible?

OPINION:

[Article IX, § 1 of the South Carolina Constitution](#) provides that the ‘General Assembly shall provide for appropriate regulation of common carriers . . . serving the public as and to the extent required by the public interest.’ A taxi company qualifies as a ‘common carrier’ because it is engaged in ‘the offering to carry for all alike for hire.’ [Reaves v. Western Union Tel. Co.](#), 110 S.C. 233, 96 S.E. 295 (1918). Therefore, the General Assembly may provide for appropriate regulation of taxi cabs.

In [S. C. Code Ann., § 58-23-10](#), et.seq. (1976, as amended), the Legislature set forth specific regulations governing taxi cab companies and certain other motor vehicle carriers except in municipalities of under 30,000 persons. [S. C. Code Ann. §§ 58-23-60\(1\)](#); 58-23-1210, et. seq.; 58-23-1510. The 1980 census listed the City of Newberry as having a population of 9,866 persons, and, therefore, Newberry is not subject to Chapter 23.

Since Newberry is not covered by Chapter 23, then whether it can regulate taxi companies within its corporate limits must be determined by examining the authority vested in individual municipalities pursuant to [S. C. Code Ann. § 5-7-30](#) (1976, as amended). This section gives municipalities:

‘. . . authority to enact regulations, resolutions and ordinances, not inconsistent with the Constitution and general law of this State, including the streets . . . or respecting any subject as shall appear to them necessary and proper for the security, general welfare and convenience of such municipalities . . . .’

As a general rule, the authority granted municipalities is that which is necessarily or fairly implied in or incident to those powers expressly granted, and those which are essential to the declared objects and purposes of the municipality. [Charleston Consol. Ry. & Lighting Co. v. City Council of Charleston](#), 92 S.C. 127, 75 S.E. 390 (1912); [Lomax v. Greenville](#), 225 S.C. 289, 82 S.E.2d 191 (1954). Municipalities, under their authorized police power, may regulate any trade, occupation or business, the unrestrained pursuit of which might effect injuriously the public health, safety or comfort. [City of Charleston v. Jenkins](#), 243 S.C. 205, 133 S.E.2d 242 (1963); [Arnold v. City of Spartanburg](#), 201 S.C. 523, 23 S.E.2d 735 (1943). This authorization readily

applies to the taxi business, which of necessity use the roads and streets of municipalities and is routinely involved in close contact with the public. Therefore, the City of Newberry may regulate taxi cabs under the authority granted by the General Assembly in § 5-7-30 as long as such regulations are (1) reasonable, [McCoy v. Town of York, et. al.](#), 193 S.C. 390, 8 S.E.2d 905 (1940), and (2) not in conflict with the Constitution or General Law of the State, [Lomax, supra](#).

\*2 Regulation of taxi cabs inside the City of Newberry's corporate limits would not be in conflict with the Constitution or General Law of the State. Any such regulation or ordinance would carry with it a presumption of constitutionality and would not be declared unconstitutional if by any reasonable construction it could be harmonized with the State and Federal Constitutions. [City of Darlington v. Stanley](#), 239 S.C. 139, 122 S.E.2d 207 (1961). The [South Carolina Constitution \(Article IX, § 1\)](#) specifically provides that the Legislature may provide for regulation of all common carriers, including taxi cabs, and any potential problems arising under the U. S. Constitution could be avoided by assuring that the regulations were not promulgated in an arbitrary or unreasonable manner. Although the Legislature has provided in Chapter 23 of Title 58 for the regulation of motor carriers, including taxi cabs, this Chapter does not apply to Newberry. The mere fact that the Legislature has enacted this chapter does not mean that a town the size of Newberry, not bound by it, is prohibited from enacting ordinances of its own on the subject. Municipal ordinances may not be inconsistent or in conflict with the laws of the State, however:

In order that there be a conflict between a state enactment and a municipal regulation both must contain either express or implied conditions which are inconsistent and irreconcilable with each other . . . If either is silent where the other speaks, there can be no conflict between them. Where no conflict exists, both laws stand . . . As a general rule, additional regulations to that of the State law does not constitute a conflict therewith . . . [McAbee v. Southern Ry. Co.](#), 166 S.C. 166, 164 S.E. 444 (1932).

Since Chapter 23 of Title 58 specifically does not apply to a town the size of Newberry, then there would be no conflict between this statute and any ordinances relating to taxi cabs enacted by Newberry pursuant to the authority granted in § 5-7-30.<sup>1</sup>

Finally, any ordinance enacted by Newberry must meet the test of reasonableness.

The standard by which the validity of an ordinance enacted under the exercise of police power is tested is that the exercise of the power should extend only to reasonable and necessary measures . . . The validity of a police regulation therefore primarily depends on whether under all the existing circumstances the regulation is reasonable or arbitrary and whether it is really designed to accomplish a purpose properly falling upon the scope of the police power. [McCoy, supra](#).

For example, the South Carolina Supreme Court has held that an ordinance imposing a license tax as a means of regulation is valid only when it is within the limits of such power and is intended for regulation; otherwise it is invalid, as where the license tax is imposed for revenue purposes, in the guise of a police regulation. [Southern Fruit Co., et.al. v. Porter, et.al.](#), 188 S.C. 422, 199 S.E. 537 (1938). The Court has also held a [Charleston ordinance](#) prohibiting sale of liquor at certain times a reasonable exercise of the police power; [Jenkins, supra](#); while holding an ordinance restricting the delivery of gasoline in certain size trucks unreasonable. [McCoy](#).

\*3 Although the Public Service Commission or larger cities, acting under Chapter 23 of Title 58, do not regulate such things as the number of cabs a company may own (a particular point addressed in your opinion request), such things as fixing rates, prescribing the license to be paid and the amount of bond to be provided, which streets the vehicles may travel on, etc., are all provided for. Additionally, McQuillen, Municipal Corporations (3rd Edition, Revised), § 24.660, et.seq., a copy of which I have provided for your information and consideration, contains extensive comments on the regulation of taxicabs by municipal corporations. In line with your question on regulating the number of taxicabs that are permitted to operate, you may find of particular interest § 24.669 of this material. If the City of Newberry chooses to enact ordinances on this subject, the key is to remember that such ordinances must be promulgated in a reasonable manner and pertain to legitimate interests and concerns of the municipality.

Bristow Marchant  
Staff Attorney

Footnotes

- 1 Since § 58-23-1510 must be presumed constitutional, no conclusion with respect to the constitutionality of the provision has been reached. See [Elliott v. Sligh](#), 233 S.C. 161, 165, 103 S.E.2d 923 (1958).

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