

1977 S.C. Op. Atty. Gen. 127 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-151, 1977 WL 24493

Office of the Attorney General

State of South Carolina

Opinion No. 77-151

May 11, 1977

*1 TO: Honorable Paul Gelegotis
Member
House of Representatives
State of South Carolina

QUESTION

Is the proposed amendment to the City of Folly Beach Ordinance, Section 13–30.1 (Attachment A) legally valid?

STATUTES AND CASES

Section 46–282, South Carolina Code of Laws (1962);

Section 59–566.2, South Carolina Code of Laws (1962);

[McCoy v. Town of York](#), 193 S. C. 390, 85 S. E. 2d 905 (1946);

[Owens v. Owens](#), 193 S. C. 260, S. E. 2d 339 (1940);

McQuillan, Municipal Corporations Sections 26–167–8;

60 C. J. S. Motor Vehicles Section 28(1) (1969);

1970 Opinions of the Attorney General, No. 2953, p. 212

DISCUSSION

The right of a municipality to regulate parking on its streets has been statutorily recognized in this State. Sections 46–282 and 59–566.2, S. C. Code (1962). Generally, the power to regulate parking has also been held to imply the power to exact a fee to cover the expenses incurred in such regulation; thus, ordinances making a charge for parking vehicles have been held a valid exercise of the municipality's police power. McQuillen, Municipal Corporations Section 26.167 (1962). A license fee imposed for regulatory purposes should not materially exceed the expense of issuing the license and inspecting and regulating the vehicles so as to require their compliance with the regulations imposed by the ordinance. In [Owens v. Owens](#), 193 S. C. 260, 8 S. E. 2d 339 (1940), our Supreme Court held that it was clearly the law in this state— that a regulatory measure of this kind [parking meters] may produce only such revenue as is reasonably necessary to defray the expense connected with its operation, and that an ordinance passed for the real purpose of raising revenue, under the guise of obtaining funds for the enforcement of a police regulation, is invalid.

Enclosed with the City of Folly Beach's proposed ordinance (Attachment A) is a parking permit policy statement (Attachment B), which indicates that the permit fee is imposed for the purpose of producing revenue for providing and maintaining public safety and sanitation facilities on Folly Beach. Clearly, this ordinance under prior decisions of our courts is invalid for that purpose. This conclusion is strengthened by the fact that the proposed ordinance places no time limitation on parking in such public areas. Normally, the regulation of parking may justify a fee system intended to hasten the departure of parked vehicles in congested areas. McQuillen, Municipal Corporations, *supra*. However, in this case since no time limitations are imposed, it can additionally be concluded that the fees are intended solely to produce revenues rather than regulate parking.

It should also be noted that the policy statement for this ordinance (Attachment B) states that the fees will be imposed only on non-city residents. Parking regulations have been held invalid if they are arbitrary and discriminatory. *See, McCoy v. Town of York*, 193 S. C. 390, 8 S. E. 2d 905 (1940); 60 C. J. S. Motor Vehicles Section 28(1) (1969). The imposition of parking fees on non-residents, and not on the citizens of the City of Folly Beach, is discriminatory and does not afford non-residents their constitutional guaranty of equality of privilege and burden. Our office has previously opined that such an ordinance is fatally defective if it does not apply alike to all who properly come within its purview. *See*, 1970 Atty. Gen. Op. No. 2953, p. 212.

CONCLUSION

*2 The proposed ordinance by the City of Folly Beach is not a reasonable exercise of its authority to regulate parking and is, therefore, invalid.

Richard B. Kale, Jr.
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