1976 S.C. Op. Atty. Gen. 184 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4355, 1976 WL 22974

Office of the Attorney General

State of South Carolina
Opinion No. 4355
May 27, 1976

***1** Honorable Irene K. Rudnick
Member
House of Representatives
State House
Columbia, South Carolina 29202

Dear Representative Rudnick:
You have requested an opinion from this Office as to the maximum punishment that can be prescribed by ordinances promulgated pursuant to Act No. 283 of 1975, the 'home rule' legislation.

Section 47–32 of that Act prescribes for municipal ordinances:
[t]he municipal governing body may fix fines and penalties for the violation of municipal ordinances and regulations not exceeding two hundred dollars of imprisonment not exceeding thirty days.

As to county ordinances, Section 14–3703(14) of that Act prescribes that county governing bodies are empowered:
to enact ordinances for the implementation and enforcement of the powers granted in this section and provide penalties for violations thereof not to exceed the penalty jurisdiction of magistrates' courts of the county . . .. No ordinance including penalty provisions shall be enacted with regard to matters provided for by the general law, except as specifically authorized by such general law; . . ..

You have also inquired as to whether or not local authorities can enact ordinances with penalties concerning litter, gun control and freedom of information.

With respect to county ordinances dealing with these subjects, my opinion is that county governing bodies cannot enact ordinances with penalty provisions relating to freedom of information, litter or gun control for the reason that there are general laws which provide for these matters and those general laws do not specifically authorize the passage of county ordinances relating thereto, a requirement imposed the last sentence of Section 14–3703(14) of Act No. 283, hereinabove quoted. See, §§ 1–20.1 through 1–20.4, § 16–396 and §§ 16–129 through 16–129.8, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended (Cum. Supp.).

With respect to municipal ordinances dealing with these subjects, there is no language in Section 47–32 of Act No. 283 similar to the language of Section 14–3703(14) thereof; Section 47–32 does provide, however, that:
[a]ll municipalities of the State shall, . . . have authority to enact regulations, resolutions and ordinances, not inconsistent with the Constitution and general law of this State, ... [Emphasis added.]

Considering the difference between that language and the language of Section 14–3703(14) as well as the general principles of municipal corporation law relating to the enactment of local ordinances with penalty provisions where the state or federal government has already enacted penal statutes pertaining thereto [see, e.g., 5 McQUILLIN,

MUNICIPAL CORPORATIONS § 15.20 (3rd Ed.); cf., 6 Id., § 23.10 (Cum. Supp.)], my opinion is that municipal governing bodies most probably can enact penal ordinances relating to firearms [7 Id., §§ 24.489 et seq. (Cum. Supp.)] and litter [cf., Id., §§ 24.242 et seq.] so long as they do not conflict with the Constitution or general laws of this State. See, e.g., Columbia v. Phillips, 101 S.C. 391, 85 S.E. 963 (1915) (sustaining ordinance notwithstanding statute against usury); cf., Waller v. United States, 397 U.S. 387, 25 L.Ed.2d 435 (1970). As to an ordinance dealing with freedom of information, my opinion is that municipal governing bodies most probably cannot enact a penal ordinance relating thereto inasmuch as the provisions of Sections 1–20, et seq., CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended, are expressly applicable to all public agencies, including municipalities. Cf., 1972–73 OPS.ATTY.GEN. No. 3493 at 85 (a copy of which is enclosed herewith); 5 McQUILLIN, MUNICIPAL CORPORATIONS, § 14.14 (3rd Ed.).

With kind regards,

***2** Karen LeCraft Henderson
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