ALAN WILSON
ATTORNEY GENERAL

November 7, 2024

Kathy Harveston
Captain
Rock Hill Police Department
P.O. Box 11706
Rock Hill, South Carolina 29731-1706

Dear Captain Harveston:

We received your letter requesting an opinion from this Office concerning a Rock Hill ordinance making certain disorderly conduct unlawful. According to your letter, the City of Rock Hill adopted "an ordinance which is based off the state statute 16-17-530 Disorderly Conduct, but directly describes four (4) behaviors that give fair notice of being disorderly." You state the ordinance provides as follows:

> Sec. 20-131. – Disorderly conduct.
>
> It shall be unlawful for any person to engage in:
>
> (1) Riotous, tumultuous, violent or obstreperous conduct of any kind;
> (2) Fighting;
> (3) Offering violence to another; or
> (4) Disorderly public intoxication;
>
> In any public place, or sufficiently near to any such place or to any residence or place of business as to disturb or annoy any other person.

You informed us that the Rock Hill Police Department used this ordinance to charge "students engaged in mutual combat that disrupted the operation of the school day and caused the possibility of danger to the students and staff" prior to a 2021 decision by the United States District Court for the District of South Carolina. The District Court found section 16-17-530 is unconstitutionally vague as applied to primary and secondary school students. Considering the District Court's decision, you seek a

> legal opinion on the use of the Rock Hill City Ordinance of DOC Fighting when it comes to the following examples involving students:
>
> 1. During the normal school hours operation when two or more students engage in a mutual fight that disrupts the school operation and could

cause harm to those [in] proximity of the fight and could be injured by the actions of the involved parties.

2. While attending an after-school hours school sponsored event. An example would be a football game where two or more students engage in a fight. The after-school event is not mandatory for attendance, is open to the public, and the actions can cause numerous citizens who are not engaged in the fight to be injured in the panicked escape from being in the vicinity of the fight as they flee.

Law/Analysis

As we have always stated:

> This Office has . . . recognized the longstanding principle that a municipal ordinance is presumed valid and an ordinance will not be declared invalid unless it is clearly inconsistent with general state law. Hospitality Assn. of S.C. v. County of Chas., 320 S.C. 219, 464 S.E.2d 113 (1995); Scranton v. Willoughby, 306 S.C. 421, 412 S.E.2d 424 (1991). Furthermore, any ordinance must be demonstrated to be unconstitutional beyond all reasonable doubt. Southern Bell Telephone and Telegraph Co. v. City of Chas., 285 S.C. 495, 331 S.E.2d 333 (1985).

Op. Att'y Gen., 2005 WL 3689155 (S.C.A.G. Dec. 13, 2005). "Further, while this office may comment on the validity of an ordinance, only a court can actually declare an ordinance invalid or unconstitutional." Op. Att'y Gen., 1993 WL 524118 (S.C.A.G. Nov. 17, 1993).

Thus, we begin with the presumption that Rock Hill's disorderly conduct ordinance is valid. However, as you note in your letter, in 2021 a South Carolina District Court considered the constitutionality to two South Carolina statutes – section 16-17-420 of the South Carolina Code, making disturbing schools unlawful and section 16-17-530 of the South Carolina Code making public disorderly conduct unlawful. The District Court considered whether these two statutes, as written, violated the Due Process Clause of the United States Constitution because they failed to give ordinary people fair notice of the conduct they punished. The District Court noted: "To survive a vagueness challenge, a statute must give a person of ordinary intelligence adequate notice of what conduct is prohibited and must include sufficient standards to prevent arbitrary and discriminatory enforcement." Kenny v. Wilson, 566 F. Supp. 3d 447, 461 (D.S.C. 2021) (citing Manning v. Caldwell for City of Roanoke, 930 F.3d 264, 272 (4th Cir. 2019)). The District Court also noted these statutes were subject to a stricter standard of vagueness because they imposed criminal penalties and interfered with a constitutionally protected right – First Amendment freedom of speech. Id. at 461.
When deciding this case, section 16-17-530 of the South Carolina Code read as follows:

> Any person who shall (a) be found on any highway or at any public place or public gathering in a grossly intoxicated condition or otherwise conducting himself in a disorderly or boisterous manner, (b) use obscene or profane language on any highway or at any public place or gathering or in hearing distance of any schoolhouse or church or (c) while under the influence or feigning to be under the influence of intoxicating liquor, without just cause or excuse, discharge any gun, pistol or other firearm while upon or within fifty yards of any public road or highway, except upon his own premises, shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or be imprisoned for not more than thirty days.

Id. at 463 (quoting S.C. Code Ann. § 16-17-530). Regarding this provision, the District Court determined:

> The Disorderly Conduct Law provides no discernable standard for applying and enforcing it to the State's elementary and secondary school students. Furthermore, the undisputed record reflects that the lack of any such standard has resulted in a disproportionate number of students of color and students living with a disability being charged under the Law. Accordingly, the court finds that the Law is unconstitutionally vague on its face as applied to elementary and secondary school students in South Carolina.

Id. at 467. The District Court also found section 16-17-420 of the South Carolina Code, a statute making it illegal to disturb schools, was "unconstitutionally vague on its face as applied to elementary and secondary school students in South Carolina." Id. at 471. [1]

On appeal, the Fourth Circuit Court of Appeals determined: "Like the district court, we hold that both the disorderly conduct and disturbing schools laws are unconstitutionally vague as applied to elementary and secondary school students." Carolina Youth Action Project; D.S. by & through Ford v. Wilson, 60 F.4th 770, 781 (4th Cir. 2023).

In your letter, you informed us that Rock Hill's ordinance was based on section 16-17-530, but "describes four (4) behaviors that give fair notice of being disorderly" and therefore, you inquire as to whether the ordinance can be applied in two distinct situations involving students in light of the District Court's findings in Wilson. The first scenario you describe involves students fighting at school during school hours and the other involves students fighting at school after school hours at a school sponsored event. You indicate this type of conduct would be prohibited under the portion of the ordinance prohibiting "fighting." While the disorderly conduct ordinance does not state a penalty for violating it, we discovered another ordinance, Sec. 1-11 of the Rock Hill Code of Ordinances provides:

[1] The District Court noted the South Carolina Legislature amended section 16-17-420 in 2018 restricting its application only to non-students. Id. at 450.

> (a) Wherever in this Code or in any ordinance of the city any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or wherever in such Code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is provided therefor, the violation of any such provision of this Code or any such ordinance shall be punished by a fine of not more than $500.00 or imprisonment not exceeding 30 days, or both. Such sentence of imprisonment may be to the county prison camp. Each day any violation of any provision of this Code or of any ordinance shall continue shall constitute a separate offense.(b)Every person sentenced to imprisonment, either directly or in consequence of a failure to pay a fine imposed for violation of any of the rules, regulations or ordinances of the city, may, in the discretion of the municipal judge before whom he may be tried, be sentenced to labor upon the highways, streets and other public works of the city or in the county prison camp for not more than 30 days.

Therefore, the ordinance is subject to a stricter standard regarding vagueness due to the fact it imposes criminal penalties, but unlike the behavior prohibited under section 16-17-530 considered by both the District Court and the Court of Appeals, fighting is not a constitutionally protected right. Moreover, unlike the vague terms "disorderly," "boisterous manner," and "obscene and profane language" used to describe the illegal behavior in section 16-17-530, we believe "fighting" would likely put students on notice as to what behavior is considered illegal under the ordinance.[2] While we did not find any South Carolina case law interpreting the term "fighting" in the context of disorderly conduct, a Wisconsin court considering whether an ordinance prohibiting fighting was unconstitutionally vague stated:

> It is a basic and well-established rule of construction that words used in statutes (or ordinances) are to be given their common, ordinary and approved meaning. If such meaning clearly shows what an ordinance intends to require or prohibit, the courts will sustain it.
>
> 'Fighting,' the act prohibited by the ordinance, has a common and ordinary meaning sufficiently definite to be understood with reasonable certainty by persons of ordinary intelligence. That common and ordinary meaning is well expressed in the old axiom that 'It takes two to fight.'
>
> 'Fight' has been defined as a combat between two persons suggesting primarily the notion of a brawl or unpremeditated encounter, Gitlow v. Kiely, D.C.N.Y.1930, 44 F.2d 227; as an altercation for which the participant is in some degree to blame and in which he is, to some extent at least, a voluntary participant, and not that which is unavoidable and beyond his control, or which

[2] In this opinion, we only consider the "fighting" portion of Rock Hill's disorderly conduct ordinance and do not opine as to the other types of infractions under the ordinance.

> has not been occasioned by any improper conduct on his part, Coles v. New York Casualty Co., 1903, 87 App.Div. 41, 83 N.Y.S. 1063. In State v. Gladden, 1875, 73 N.C. 150, in pointing out the necessity of a mutual intent in fighting, the court said that it is not necessary that both parties should give and take blows; that it is sufficient that both parties put their bodies in a position to give and take blows, and with that intent.
>
> The definition of 'fighting' thus arrived at-and it is the one used by the trial court in its instructions to the jury-is that which is commonly understood as its meaning, and it cannot be said that the use of the word will mislead or confuse. Wrestling, boxing, duels, affrays and other activities mentioned by appellant have their own definitions under the law distinguishable from that of fighting.

City of Stoughton v. Powers, 264 Wis. 582, 585–86, 60 N.W.2d 405, 407 (1953). See also, City of East Peoria v. Moushon, 45 Ill. App. 3d 719 (1977) (finding a disorderly conduct ordinance prohibiting fighting not unconstitutionally vague).

Based on similar reasoning, a court could conclude the ordinance gives adequate notice to persons of ordinary intelligence of prohibited conduct. Nonetheless, both Kenny v. Wilson and Carolina Youth Action Project, indicate elementary and secondary school students must be afforded greater deference than ordinary persons regarding prohibited conduct. Therefore, we believe a court must make the ultimate determination of whether the Rock Hill ordinance is unconstitutionally vague as applied to students.

Conclusion

In your letter, you informed us that the Rock Hill ordinance prohibiting disorderly conduct was based on section 16-17-530 of the South Carolina Code, the state statute prohibiting disorderly conduct. The federal district court for the District of South Carolina found section 16-17-530 unconstitutionally vague as applied to students. Kenny, 566 F. Supp. 3d 447. The Fourth Circuit Court of Appeals affirmed this finding in Carolina Youth Action Project, 60 F.4th 770. Thus, we understand your hesitation to charge students with violating the ordinance. However, in our review of the ordinance and considering the two situations you describe in your letter, we found that both situations involve fighting among students, which is specifically prohibited in the ordinance. The term "fighting" has a commonly understood meaning. Therefore, we do not believe a court would find the portion of the ordinance prohibiting "fighting" suffers the same constitutional infirmity as the vague language in section 16-17-530 when applied to students. Nonetheless, federal jurisprudence indicates a need to afford greater deference to students when subjecting them to criminal penalties for their behavior at school. Therefore, not only is it prudent to seek judicial clarification on this issue, but a judicial determination is required because only a court can make decisions on the validity of ordinances. As such, we advise the Rock Hill disorderly conduct ordinance remains valid and enforceable until a court rules otherwise.

Sincerely,

Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General