



ALAN WILSON
ATTORNEY GENERAL

November 15, 2024

The Honorable Larry K. Grooms
Member
South Carolina Senate
P.O. Box 142
Columbia, South Carolina 29202

Dear Senator Grooms:

We received your letter requesting an opinion of this Office concerning enforcement of municipal parking ordinances by private entities. In your letter, you explain:

It has come to my attention that the governing body of a coastal municipality has contracted with a private entity to enforce the municipality's parking ordinance. The private entity patrols the municipality's streets looking for violators of the ordinance, writes tickets for the violators, and collects the fines. The municipality and the private entity then split the fines based upon a formula in their contract.

Specifically, you ask: "Is it the opinion of your office that a municipality contracting with a private entity to enforce the municipality's parking ordinance is a prohibited delegation of the municipality's police powers"?

Law/Analysis

As mentioned in prior opinions, a municipality's police powers are conferred to them by the Legislature primarily through section 5-7-30 of the South Carolina Code (Supp. 2023). Moreover, our courts and the Legislature recognize regulating parking falls under this authority. Owens v. Owens, 193 S.C. 260, 8 S.E.2d 339, 342 (1940) (recognizing a municipality's authority to regulate parking); S.C. Code Ann. § 56-5-710 (2018) (specifying local authorities have the power to regulate parking "with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power . . ."). For reasons explained below, because regulating parking involves the exercise of a municipality's police powers, we do not believe such authority can be delegated to a private entity.

As you mentioned in your letter, we considered whether a municipality's police powers may be delegated to a private entity in prior opinions issued by this Office. In a 1980 opinion, we considered whether a municipality had the authority to contract with a private security agency

allowing it to make arrests on public streets and public property. Op. Att’y Gen., 1980 WL 121077 (S.C.A.G. Mar. 6, 1980). We determined:

Generally, the State’s police power may be delegated by the legislature to a municipality, but the legislative reach of that authority must be strictly construed. McQuillan, Municipal Corporations, Vol. 6, § 24.39 at 557. Further, a municipality has no greater powers in passing an ordinance relative to the police power than those delegated to it by the legislature. Henderson v. City of Greenwood, 172 S.C. 16, 172 S.E. 689 . . . It has long been the law in this State that no municipality may by contract part with the authority delegated it by the State to exercise the police power, Sammons v. City of Beaufort, 225 S.C. 490, 83 S.E.2d 153. Here the State has delegated the power of law enforcement to its municipalities and the municipality may not part with that power by contract with a private security agency.

Id.

You also mentioned our 2010 opinion addressing a county’s ability to delegate its authority to enforce a county tree removal ordinance to a homeowner’s association. Op. Att’y Gen., 2010 WL 3505050 (S.C.A.G. Aug. 4, 2010). We acknowledged the county’s ability to delegate zoning enforcement to code enforcement officers but found no authority allowing the county to further delegate zoning enforcement to a private entity. Id. We discussed powers that can and cannot be delegated, noting that ministerial duties can be delegated, but in the absence of constitutional or statutory authority, discretionary or quasi-judicial powers cannot be delegated. Because exercising police power is a discretionary function, we concluded “governmental entities are precluded from delegating their police powers to individuals or private entities.” Id.

In our research, we also found a 2012 opinion similarly concluding a homeowner’s association’s private security force did not have law enforcement authority to enforce beach rules on public property. Ops. Att’y Gen., 2012 WL 5376055 (S.C.A.G. Oct. 19, 2012). In the opinion, we cited to the 2010 opinion referenced above as well as a 2008 opinion finding a special tax district did not have the ability to contract with a private company to provide law enforcement. Based on these opinions, we again found local governments cannot delegate their police powers to private entities absent constitutional or statutory authority. Id.

“This Office recognizes a long-standing rule that we will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law.” Op. Att’y Gen., 2009 WL 959641 (S.C.A.G. Mar. 4, 2009). As our prior opinions conclude, local governments are without the ability to delegate police powers without constitutional or statutory authority. Finding no constitutional or statutory authority allowing municipalities to delegate parking enforcement, which we find is an exercise of their police powers, we do not believe municipalities can delegate this authority to a private entity.

Conclusion

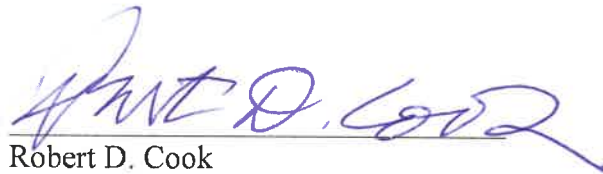
Parking enforcement involves the exercise of a municipality's police powers. Based on prior opinions of this Office, police power may not be delegated to private entities absent legislative or constitutional authority. Finding no such authority, we do not believe a municipality may delegate parking enforcement to a private entity.

Sincerely,



Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General