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OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

June 14, 2005

Chris Noury, Esquire  
North Myrtle Beach City Attorney  
1018 Second Avenue South  
North Myrtle Beach, South Carolina 29582

Dear Mr. Noury:

In a letter to this office you indicated that the City of North Myrtle Beach has recently authorized, via a franchise agreement, parasailing activities from the beaches of North Myrtle Beach. The terms of the franchise agreement require parasailing watercraft to remain a distance of approximately 1,900 feet from the shore while the watercraft is engaged in parasailing, a distance recommended by the United States Coast Guard to the City. You further indicated that the City of Atlantic Beach has also authorized parasailing from its beaches but does not impose a minimum distance that parasailing watercraft must reach before engaging in parasailing activities.

According to your letter, parasailing operators from Atlantic Beach routinely bring their watercraft engaged in parasailing activities into the jurisdictional waters of North Myrtle Beach at a distance much less than the 1,900 feet minimum required for the North Myrtle Beach parasailing franchisees. You indicated that North Myrtle Beach currently has an ordinance that prohibits any individual from operating watercraft within 100 yards seaward from the shoreline or within 50 yards of any swimmer. You stated that North Myrtle Beach is concerned for the health, safety and welfare of its residents, tourists and beachgoers and that conducting parasailing activities within 1,900 feet of the shoreline may be dangerous to patrons engaged in parasailing, as well as swimmers and individuals on the beach. You have requested an opinion of this office as to the validity of a potential ordinance that would require all parasailing operators engaging in parasailing activities in the jurisdictional waters of the City of North Myrtle Beach to remain a minimum distance of 1,900 feet from the shore.

In its decision in Barnhill v. City of North Myrtle Beach, 333 S.C. 482, 511 S.E.2d 361 (1999), the State Supreme Court referenced the provisions of S.C. Code Ann. § 5-7-30 (2004) which state:

Each municipality of the State, in addition to the powers conferred to its specific form of government, may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of powers in relation to roads, streets, markets, law enforcement, health and

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order in the municipality or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it....

The Court commented the pursuant to such provision "...municipalities enjoy a broad grant of power regarding ordinances that promote safety." 333 S.C. at 363. In Barnhill, additional reference was made to S.C. Code Ann. § 5-7-140 (2004) which provides that:

The corporate limits of any municipality bordering on the high-tide line of the Atlantic Ocean are extended to include all that area lying between the high-tide line and one mile seaward of the high-tide line. These areas are subject to all the ordinances and regulations that may be applicable to the areas lying within the corporate limits of the municipality....

Additionally, pursuant to S.C. Code Ann. § 5-7-150 (2004),

Every coastal municipality has criminal jurisdiction over piers and other structures and the waters of the ocean, a sound, or an inlet within one mile of those portions of the strand within the corporate limits. The corporate limits of the municipality are extended in a straight line from the strand into the ocean, inlet, or sound from the point where the corporate limits of the municipality reach the high-water mark of the strand.

Therefore, the corporate limits of a municipality which borders on the Atlantic Ocean includes that area between the high-tide line and one mile seaward.

The Court in Barnhill found that consistent with Sections 5-7-30 and 5-7-140, a municipality's restrictions on the launching and beaching of motorized watercraft on the public beach were reasonably related to the promotion of safety and were within the City's police power. In my opinion, an ordinance restricting parasailing as suggested in your letter would also be within the police power of the City of North Myrtle Beach as an ordinance promoting public safety.

As to your specific question regarding the validity of a potential ordinance that would require all parasailing operators engaging in parasailing activities in the jurisdictional waters of the City of North Myrtle Beach to remain a minimum distance of 1,900 feet from the shore, reference may be had to S.C. Code Ann. § 50-21-30(1) (Supp. 2004) which pertains to the equipment and operation of watercraft in this State. Such provision states that

(t)he provisions of this chapter, and of other applicable laws of this State shall govern the operation, equipment, numbering and all other matters relating thereto whenever any vessel shall be operated on the waters of this State or when any activity regulated by this chapter shall take place thereon; but nothing in this chapter shall be

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construed to prevent the adoption of any ordinance or local law relating to operation and equipment of vessels the provisions of which are identical to the provisions of this chapter, amendments thereto, or regulations issued thereunder; provided, that such ordinances or local laws shall be operative only so long as and to the extent that they continue to be identical to provisions of this chapter, amendments thereto, or regulations issued thereunder.

As stated by the Supreme Court in Barnhill, "...the State has preempted the entire field of regulating watercraft on navigable waters as provided in Title 50...." However, as pointed out by you, subsection (2) of Section 50-21-30 additionally states that:

(a)ny subdivision of this State may, at any time, but only after three days' public notice make formal application to the...(Department of Natural Resources)...for special rules and regulations with reference to the operation of vessels on any waters within its territorial limits and shall set forth therein the reasons which make such special rules and regulations necessary or appropriate.

Consistent with the broad authority granted municipalities pursuant to Section 5-7-30 regarding ordinances regulating public safety and Sections 5-7-140 and 5-7-150 granting municipalities jurisdictional authority to a distance of one mile from the high tide line, in my opinion, the City of North Myrtle Beach would be authorized to enact an ordinance that would restrict all parasailing operators from engaging in parasailing activities in the jurisdictional waters of the City at a minimum distance of 1,900 feet. Of course, any such enactment must comply with the provisions of Section 50-21-30(2) and its requirement for application by a municipality to the Department of Natural Resources regarding any special rules and regulations with reference to the operation of vessels on any waters within its territorial limits.

If there are any questions, please advise.

Sincerely,



Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General