



HENRY McMASTER
ATTORNEY GENERAL

June 6, 2006

Elizabeth Wright, Chief of Police
Town of Pine Ridge
2757 Fish Hatchery Road
West Columbia, South Carolina 29172

Dear Chief Wright:

In a letter to this office you indicated that in an effort to control the number of disabled vehicles kept on private property, your town is considering requiring tags and insurance on all vehicles. According to your letter, in such circumstances, every vehicle parked in the driveway of a residence would have to display a tag and be insured or it must be disposed of or removed. You have questioned whether such an ordinance would be lawful.

S.C. Code Ann. § 56-3-110 states that

[e]very motor vehicle...driven, operated or moved upon a highway in this State shall be registered and licensed in accordance with the provisions of this chapter. It shall be a misdemeanor for any person to drive, operate or move upon a highway or for the owner knowingly to permit to be driven, operated or moved upon a highway any such vehicle which is not registered and licensed and the required fee paid as provided for in this chapter. (emphasis added).

See also: S.C. Code Ann. § 56-3-1240 ("It is unlawful to operate or drive a motor vehicle with the license plate missing...") § 56-3-1250 ("The department, upon registering and licensing a vehicle, shall issue to the owner of the vehicle a registration card...(which)...must at all times be carried by the person driving or in control of the vehicle...").

S.C. Code Ann. § 56-10-10 provides that

[e]very owner of a motor vehicle required to be registered in this State shall maintain the security required by Section 56-10-20 with respect to each motor vehicle owned by him throughout the period the registration is in effect.

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S.C. Code Ann. § 56-10-20 states in part that “[t]he security required under this chapter is a policy or policies written by insurers authorized to write such policies in South Carolina....” Also, S.C. Code Ann. § 56-10-220 states that

[e]very person applying for registration for a motor vehicle shall at the time of such registration and licensing declare the vehicle to be an insured motor vehicle....

S.C. Code Ann. § 56-10-225 provides that

(A) A person whose application for registration and licensing of a motor vehicle has been approved by the Department of Motor Vehicles must maintain in the motor vehicle at all times proof that the motor vehicle is an insured vehicle....

Additionally, S.C. Code Ann. § 56-10-520 states that

[a] person who owns an uninsured motor vehicle : (1) licensed in the State; or (2) subject to registration in the State; who operates or permits the operation of that motor vehicle without first having paid to the director the uninsured motor vehicle fee required...is guilty of a misdemeanor....

Consistent with such, any vehicle driven on the highways of this State is required to be registered and licensed. Furthermore, when properly registering a vehicle, it must be insured. Operating an uninsured vehicle without having paid the uninsured motor vehicle fee is a criminal offense.

I am unaware of any State statutory provisions that comment on any requirements as to registering, licensing and insuring motor vehicles which are not driven on the highways of this State. S.C. Code Ann. § 5-7-30 states in part:

[e]ach 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 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. (emphasis added).

Article VIII, Section 14 of the State Constitution states that

[i]n enacting provisions required or authorized by this article, general law provisions applicable to the following matters shall not be set aside:... (5) criminal laws and the penalties and sanctions for the transgression thereof;....

In its decision in Connor v. Town of Hilton Head Island, 314 S.C. 251, 442 S.E.2d 608 (1994), the State Supreme Court dealt with a situation where the owners of and a dancer at a business where nude and semi-nude barroom dancing was allowed brought an action to enjoin the enforcement of a municipal ordinance that prohibited nude and semi-nude barroom dancing. It was alleged that the ordinance violated their First Amendment rights to free speech.

The Court recognized that state laws which governed nudity did not prohibit nude dancing per se. Reference was made to Section 5-7-30 and Article VIII, Section 14. The Court stated that “[s]ince Town has criminalized conduct that is not unlawful under relevant State law, we conclude Town exceeded its power in enacting the ordinance in question.” 314 S.C. at 254. The Court therefore construed Article VIII, Section 14 of the State Constitution as prohibiting a municipality from prohibiting conduct not unlawful under the criminal laws of this State that dealt with the same subject.

In Diamonds v. Greenville County, 325 S.C. 154, 480 S.E.2d 718 (1997), a nightclub owner brought a declaratory judgment action against a county in an attempt to have a county ordinance prohibiting public nudity declared unconstitutional. Citing Connor, the State Supreme Court similarly held that the county ordinance at issue

...has the effect of making it unlawful to appear nude in public, even if no state laws addressing the same subject are violated in the process. For this reason the ordinance cannot stand.

480 S.E.2d at 720. The Court in reaching its conclusion cited the comments of the drafters of Article VIII, Section 14 stating that “[o]ne of the Committee’s major concerns regarding this constitutional provision was the ‘local government’s making an act a crime that was not a crime under state law.’” Ibid. The Court also stated that “...our language regarding Article VIII, Section 14 in other cases shows that we have consistently interpreted that section broader than only prohibiting local governments from adopting ordinances that conflict with state general law.” Ibid.

More recently, the State Supreme Court in its decision in Palmetto Princess, LLC v. Town of Edisto Beach, 2006 WL 1469976 (filed May 30, 2006) dealt with the question of the constitutionality of a municipal ordinance that prohibited the possession of a gambling device on a vessel within the waters of the municipal boundaries of Edisto Beach which operated for the purpose of conducting a day cruise.

In its opinion, the Court noted that it had previously held that “cruises to nowhere” were legal. See: Stardancer Casino, Inc. v. Stewart, 347 S.C. 377, 556 S.E.2d 357 (2001). Therefore, as determined by the Court, “...at the time Edisto’s ordinance was enacted and Palmetto Princess had requested a business license to operate a gambling day cruise, a gambling day cruise was a legal activity allowed by the State.” Citing its decisions in Connor, supra, and Diamonds, supra, the Court determined that

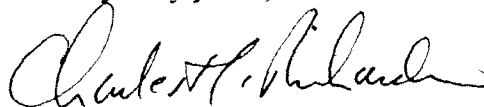
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[b]ecause a gambling day cruise was a legal activity allowed by the State, Edisto's ordinance is unconstitutional because it makes a legal activity unlawful... Where the General Assembly has occupied the field in a particular area, *i.e.* gambling, by describing what is and what is not proscribed, local governments are not free to alter the standards established by the General Assembly.

Consistent with the above, in my opinion, a requirement by a municipality that unless a vehicle parked in the driveway of a residence displays a tag and is insured, it must be disposed of or removed, would probably be considered to be unconstitutional. Inasmuch as the State has by statute specifically required that vehicles driven on the highways of this State be registered, licensed and insured, it appears that the State had "occupied the field" in this area and, therefore, a municipality would not be authorized to vary those standards.

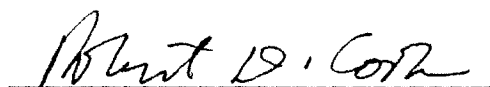
With kind regards, I am,

Very truly yours,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General