



HENRY McMASTER
ATTORNEY GENERAL

January 12, 2009

Sergeant Rick Masters
Greenville Technical College Campus Police Department
Post Office Box 5616
Greenville, South Carolina 29606-5616

Dear Sergeant Masters:

In a letter to this office you indicated that you are a member of the Greenville Technical College Campus Police Department and derive your law enforcement authority as a state constable appointed by the Governor. You indicated that the Technical College has various locations throughout Greenville County and typically you bring your cases in the court of one particular magistrate. You also indicated that as a law enforcement officer you would like to be able to cite for violations of Greenville County ordinances along with State statutory offenses. You have questioned whether you may cite for violations of these county ordinances.

The law enforcement authority of a state constable is provided for by S.C. Code Ann. § 23-1-60. Such provision states that

[t]he Governor may, in his discretion, appoint such additional deputies, constables, security guards and detectives as he may deem necessary to assist in the detection of crime and the enforcement of any criminal laws of this State....
(emphasis added).

A prior opinion of this office dated January 29, 1996 determined that “[a] constable is empowered to enforce any state statute.” In an opinion dated January 25, 1996, this office citing the decision of the State Supreme Court in State v. Luster, 178 S.C. 199, 182 S.E. 427 (1935) determined that “...state constables possess the authority of regularly commissioned peace officers, including the power of arrest.” That opinion citing the decision in State v. Franklin, 80 S.C. 332, 338, 60 S.E. 953, 955 (1908) noted that “[o]ur Supreme Court has stated that constables perform all the duties of law enforcement officers and in particular ‘a constable stands on the same footing as a sheriff.’” Consistent with an opinion of this office dated May 20, 1996, a sheriff is authorized to enforce a county ordinance.

As to the question of enforcement of county ordinances generally, an opinion of this office dated May 20, 1996 determined that

[c]ourts have generally held that local ordinances-municipal as well as county-constitute “criminal laws” of the State...When the words “laws of this state” are used, the generally accepted meaning is that these words include state statutes as well as municipal ordinances...As our Supreme Court has noted, by enacting home rule, the Legislature intended “to...restore autonomy to local government...Thus, within the respective spheres of the police power of counties and municipalities, the proper adoption of ordinances by these political subdivisions would be considered “criminal laws of this State.”

In Rincon Band of Mission Industries v. County of San Diego, 324 F. Supp. 371 (S.D. Cal. 1971), cited in the referenced 1996 opinion, the question raised was whether the defendant county could enforce its municipal anti-gambling ordinance on the Rincon Reservation. The court ruled that the county could because the municipal ordinances qualified as “criminal laws of the state.” Also cited in the opinion were the decisions in City of Dayton v. Adams, 223 N.E.2d 822, 824 (Ohio, 1967) where the court stated that “[w]hen the words ‘laws of this state’ are used, the generally accepted meaning is that this includes state statutes and municipal ordinances” and the decision in Ex parte Lawrence, 11 P. 217 (Cal. 1886) where the California Supreme Court determined that an ordinance was included within the meaning of “law of this state.” Also referenced was the decision in Kansas City v. Jordan, 164 P. 188 (Kan. 1917) where the Kansas Supreme Court cited the decision of the United States Supreme Court in North American Cold Storage Co. v. Chicago, 211 U.S. 306, 313 where the Court had stated that

[i]n this case the ordinance in question is to be regarded as in effect a statute of the state, adopted under a power granted it by the state legislature, and hence it is an act of the state within the Fourteenth Amendment.

163 P. at 191. The opinion also referred to the decision in People v. Walker, 354 N.W.2d 312, 318 (Mich. Ct.App. 1984) where the court stated that “[t]he term ‘law’ includes the entire body of law, including it is clear, validly passed municipal ordinances.” But see: In re Hurston, 210 P. 495 (Kan. 1922) (a conviction of an offense “against the criminal laws of this state” did not include city ordinance violations).

An opinion of the Arkansas Attorney General dated September 22, 2000 determined that a city ordinance violation “...can still be a ‘violation under the applicable criminal laws of this state....’” An opinion of the Kansas Attorney General dated March 27, 1997 stated that

[a]n ordinance of a municipal corporation is a local law...There is a difference of opinion, however, whether ordinances are “laws” within the meaning of statutory or constitutional provisions...In United States Fidelity and Guarantee v. Guenther, 281

U.S. 34, 50 S.Ct. 165, 74 L.Ed. 683 (1930), the United States Supreme Court construed an accident insurance policy that excluded coverage of an insured when the insured's automobile was being operated by a person under the age limit "fixed by law" and concluded that such law included a municipal ordinance....In that case, the Court concluded that the term "law" could be used in its generic sense as meaning the rules of conduct prescribed by a controlling authority and having binding legal force which could include a municipal ordinance as well as a statute.

As referenced above, as a member of the Greenville Technical College Campus Police Department deriving your law enforcement authority as a state constable appointed by the Governor, you are authorized to enforce "any criminal laws of this State." Consistent with the authorities cited above, in the opinion of this office, that enforcement authority would include county ordinances.

If there are any questions, please advise.

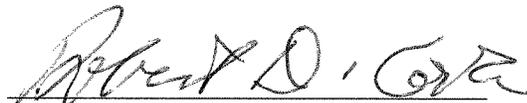
Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



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Deputy Attorney General