January 15, 2008

Jeffrey B. Moore, Executive Director
South Carolina Sheriffs' Association
112 Westpark Boulevard
Columbia, South Carolina 29210-3856

Dear Jeff:

In a letter to this office you referenced several proposed county ordinances prepared by the Greenwood County Sheriff's office. The question has been raised as to the authority of the County to enact such ordinances.

Pursuant to S.C. Code Ann. § 4-9-30 counties "within the authority granted by the Constitution and subject to the general laws of this State" were given a list of enumerated powers. Included among these powers is the authorization

> (14) to enact ordinances for the implementation and enforcement of the powers granted in this section and provide penalties for violations thereof not to exceed the penalty jurisdiction of magistrates' courts...No ordinance including penalty provisions shall be enacted with regard to matters provided for by the general law; except as specifically authorized by such general law.....

The criminal jurisdiction of a magistrate's court extends to offenses that have a penalty of a fine not exceeding five hundred dollars or imprisonment not exceeding thirty days, or both. S.C. Code Ann. § 22-3-550. As stated in an opinion of this office dated December 1, 1986, "...a county council is not authorized to adopt an ordinance which would vary general laws or the Constitution of this State." An opinion of this office dated August 16, 2007 referenced a prior opinion of this office dated May 15, 1990 which stated that

> …political subdivisions cannot adopt an ordinance repugnant to the State Constitution or laws, which ordinance would be void… Therefore, municipalities and counties are not free to adopt an ordinance which is inconsistent with or repugnant to general laws of the State…[P]olice ordinances in conflict with statutes, unless

> authorized expressly or by necessary implication, are void. A charter or ordinance cannot lower or be inconsistent with a standard set by law… Even where the scope of municipal power is concurrent with that of the state and where an ordinance may prohibit under penalty an act already prohibited and punishable by statute, an ordinance may not conflict with or operate to nullify a state law… Ordinances lowering or relaxing statutory standards relative to offenses are void as in conflict with state law and policy…(Also)…municipalities lack the authority to adopt ordinances and provide penalties…that either increase or decrease the penalty provided for the same offense by the general law.

Article VIII, Section 14 of the State Constitution relating to local government 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....

These provisions have been interpreted by the State Supreme Court to provide that local governments may not enact ordinances that impose greater or lesser penalties than those established by state law. City of North Charleston v. Harper, 306 S.C. 153, 410 S.E.2d 569 (1991); Terpin v. Darlington County Council, 286 S.C. 112, 332 S.E.2d 771 (1985). As stated in another prior opinion of this office dated December 5, 1990,

> [c]ounties and municipalities are political subdivisions of the State and have only such powers as have been given to them by the State, such as by legislative enactment. Williams v. Wylie, 217 S.C. 247, 60 S.E.2d 586 (1950). Such political subdivisions may exercise only those powers expressly given by the State Constitution or statutes, or such powers necessarily implied therefrom, or those powers essential to the declared purposes and objects of the political subdivision. McKenzie v. City of Florence, 234 S.C. 428, 108 S.E.2d 825 (1959). In so doing, however, political subdivisions cannot adopt an ordinance repugnant to the State Constitution or laws. Central Realty Corp. v. Allison, 218 S.C. 435, 63 S.E.2d 153 (1951); Law v. City of Spartanburg, 148 S.C. 229, 146 S.E. 12 (1928).

Another opinion dated May 1, 2007 quoting an earlier opinion stated that "...an ordinance cannot hamper the operation or effect of a general state law but instead must be in harmony with the State law."

An opinion of this office dated February 1, 2006 dealt with the question of whether a county could enact an ordinance against speeding that established civil penalties and remedies for that violation. The opinion noted that "...local governments may not enact ordinances that impose greater or lesser penalties than those established by state law." Therefore, political subdivisions are free to

adopt an ordinance as long as such ordinance is not inconsistent with or repugnant to general laws of the State, including penalty provisions. Another opinion of this office dated October 5, 1973 noted that

> ...while it is clear that...(a municipality)...has the power to pass public health ordinances and that those municipal ordinances can incorporate by reference already existing state code provisions,...the sole effect of the enactment of such ordinances would be needless duplication.

Consistent with the above, the proposed county ordinances referenced by you would have to be examined as to whether they are permitted consistent within the parameters of what is permitted for counties generally in enacting ordinances as set forth above. This office is not in a position to comment on each such proposed ordinance as such would be a matter for review by the county attorney.

With kind regards, I am,

Very truly yours,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook
Assistant Deputy Attorney General