

May 4, 2007

The Honorable P. J. Tanner  
Sheriff, Beaufort County  
P. O. Box 1758  
Beaufort, South Carolina 29901

Dear Sheriff Tanner:

In a letter to this office you referenced the enforcement of a new “no smoking” ordinance on Hilton Head Island. By that ordinance, a violation is a civil penalty rather than a criminal fine. You have questioned whether the sheriff’s department can enforce an ordinance that only has a civil penalty.

I have not located any case law in this State directly responsive to the question of whether a sheriff can enforce a civil penalty. However, a prior opinion of this office dated July 25, 1996 has dealt with the issue. According to that opinion, a “civil fine” is considered to be “...a sum of money exacted of a person guilty of a crime...as a pecuniary punishment, the amount of which may be fixed by law or left to the discretion of the court.” The opinion further states that

[p]roceedings for the recovery of penalties can be either civil or criminal in nature, and the mode in which penalties shall be enforced is a matter resting within the discretion of the...(governing body)...in each case to be determined from the provisions of the particular statute in question...However, where the statute fails to designate the procedure for collection of the penalty, it may be collected by a civil action.

Such opinion citing the decision in State ex rel. McLeod v. C and L Corporation, 280 S.C. 519, 313 S.E.2d 334 (1984) further states that “[t]ypically, where a ‘civil fine’ is authorized, such sanction is enforced in a civil proceeding.” See also: Op. La. Atty. Gen. dated December 29, 1989 (“[c]ivil enforcement means the filing of a lawsuit to collect civil fines imposed by an ordinance...”) It was further stated in the 1996 opinion that

...the action for enforcement would need to be brought by a public official. Certainly, the circuit solicitor could bring such an action. Arguably, as well, a law enforcement

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agency such as a sheriff or chief of police would have standing to bring such an action for enforcement.

Therefore, consistent with that opinion, it appears that the sheriff's department would be authorized to enforce the no smoking ordinance that calls for punishment be a civil penalty of a fine and could initiate an action to collect on any civil penalty.

If there are any questions, please advise.

Sincerely,

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