HENRY MCMASTER
ATTORNEY GENERAL

October 31, 2008

The Honorable Joan Brady
Member, House of Representatives
151 Berry Tree Lane
Columbia, South Carolina 29223

Dear Representative Brady:

In a letter to this office you requested an opinion regarding the provisions of Act No. 333 of 2008, the Sex Offender Residency Registration Act. You have questioned the restrictions on local governments implementing a distance requirement regarding the residency requirements of sex offenders either more or less than the one thousand feet provided for by the Act.

The referenced Act generally makes it illegal for a sex offender convicted of certain specified offenses "to reside within one thousand feet of a school, daycare center, children's recreational facility, park, or public playground." Exceptions are provided for certain situations such as where an offender lived in a prohibited area before the effective date of the Act. Criminal penalties are provided for violations of such provision and it is specifically stated that "[a] local government may not enact an ordinance that contains penalties that exceed or are less lenient than the penalties contained in this section."

The restriction on local governments providing penalties inconsistent with Act No. 333 is consistent with the general rule that local governments may not enact ordinances that impose greater or lesser penalties than those established by state law. See: Beachfront Entertainment, Inc. v. Town of Sullivan's Island, 2008 WL 4109723 (2008); City of North Charleston v. Harper, 306 S.C. 153, 410 S.E.2d 569 (1991).

However, the restriction on local governments with regard to penalties that exceed or are less lenient that the penalties established by State law does not, in the opinion of this office, prohibit a local jurisdiction from enacting prohibitions greater than the limitations set by state law, i.e., restricting residency by sex offenders greater than one thousand feet. As set forth in Denene, Inc. v. The City of Charleston, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2002), "[i]n order to preempt an entire field, an act must make manifest a legislative intent that no other enactment may touch upon the subject in any way." Furthermore, an explained by the Court in Denene, "[a]s a general

rule, 'additional regulation to that of State law does not constitute a conflict therewith." 352 S.C. at 214. Also,

> [i]n order for there to be a conflict between a state statute and a municipal ordinance ''both must contain either express or implied conditions which are inconsistent or irreconcilable with each other. Mere differences in detail do not render them conflicting. If either is silent where the other speaks, there can be no conflict between them. Where no conflict exists, both laws stand.

Ibid. See also: Foothills Brewing Concern, Inc. v. City of Greenville, 377 S.C. 355, 660 S.E.2d 264 (2008).

Act No. 333, while prohibiting certain sex offenders from residing within one thousand feet of named places, does not prohibit additional regulation by a local government broadening the restricted area in which sex offenders may reside. Such action by a local government would be considered additional regulation that is not in conflict with state law.

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:

Robert D. Cook
Deputy Attorney General