

7647 *Salley*



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

October 15, 2003

The Honorable N. R. Salley, Sr.
Mayor, Town of Salley
Post Office Box 484
Salley, South Carolina 29137-0484

Dear Mayor Salley:

In a letter to this office you questioned whether if a municipal ordinance specifies a particular amount of a fine for a certain violation, does a municipal judge have the authority to change the stipulated fine.

S.C. Code Ann. Section 5-7-30 (Supp. 2002) provides that "(t)he municipal governing body may fix fines and penalties for the violation of municipal ordinances and regulations not exceeding five hundred dollars or imprisonment not exceeding thirty days, or both." S.C. Code Ann. Section 14-25-65 (Supp. 2002) states in part that "(i)f a municipal judge finds a party guilty of violating a municipal ordinance or a state law within the jurisdiction of the court, he may impose a fine of not more than five hundred dollars or imprisonment for thirty days, or both." Furthermore, pursuant to S.C. Code Ann. Section 14-25-75 (Supp. 2002), "(a)ny municipal judge may suspend sentences imposed by him upon such terms and conditions as he deems proper including, without limitation, restitution or public service employment."

As indicated in City of North Charleston v. Harper, 306 S.C. 153, 410 S.E.2d 569 (1991), the provisions in Title 14 "...allow municipal judges a great degree of discretion to impose appropriate punishment and to suspend sentences." In that decision, the supreme court dealt with a situation where a municipal drug ordinance prohibiting the possession of marijuana provided a specific sentence in mandating that a violator of the particular ordinance "...shall be sentenced to thirty (30) days in jail." Referencing Sections 14-25-75 and 14-25-65, the Court commented:

Municipal judges' discretionary authority has been given pursuant to state law. The City has attempted to circumvent this grant of authority by enacting an ordinance which by its terms deprives municipal judges of discretionary authority. Power granted pursuant to state law can be restricted only by state law. A local government may not forbid what the legislature expressly has licensed, authorized or required.

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306 S.C. at 157. As a result, the Court ruled that a municipal ordinance which expressly stated that a violator of that ordinance "...shall be sentenced to thirty (30) days in jail" conflicted with state law and was, therefore, void.

As referenced in a prior opinion of this office dated December 29, 1982, "(i)t is generally held that a sentencing judge is vested with broad discretion to mete out the sentence he thinks appropriate after all the facts are before him." See also: State v. Sidell, 262 S.C. 397, 205 S.E.2d 2 (1974) (broad discretion is given to trial judge in imposing sentence within legal limits). Therefore, as to your situation, a municipal ordinance cannot specify a particular fine so as to limit the discretionary authority of a judge in sentencing within his statutorily authorized limits.

Sincerely,

A handwritten signature in cursive script, reading "Charles H. Richardson". The signature is written in black ink and is positioned above the typed name.

Charles H. Richardson
Senior Assistant Attorney General