ALAN WILSON
ATTORNEY GENERAL

May 29, 2013

Kenneth E. Gaines, Esquire
City Attorney
City of Columbia
Post Office Box 667
Columbia, South Carolina 29202

Dear Mr. Gaines,

You seek an opinion of this Office as to whether a proposed traffic ordinance conflicts with State law. The proposed ordinance provides, in relevant part:

> **Sec. 12-5. Obedience of state traffic laws**
>
> (a) It is unlawful to operate a vehicle in violation of any section of Article 7, 11, 13, 15, 17, 19 or 21 of Chapter 5 of Title 56 of the Code of Laws of South Carolina.
>
> (b) Any person guilty of a violation of this ordinance shall be assessed a fine of no less than $100.00 and no more than $300.00, in the discretion of the court.

Law/Analysis

With regards to questions concerning the validity of a local ordinance, we begin with the principle that "[a]n ordinance is a legislative enactment and is presumed to be constitutional." Southern Bell Tel. & Tel. Co. v. City of Spartanburg, 285 S.C. 495, 497, 331 S.E.2d 333, 334 (1985). The burden of proving the invalidity of a local ordinance rests with the party attacking it. Id. Furthermore:

> A two-step process is used to determine whether a local ordinance is valid. First, the Court must consider whether the municipality had the power to enact the ordinance. If the State has preempted a particular area of legislation, a municipality lacks power to regulate the field, and the ordinance is invalid. If, however, the municipality had the power to enact the ordinance, the Court must then determine whether the ordinance is consistent with the Constitution and the general laws of the State.

Foothills Brewing Concern, Inc. v. City of Greenville, 377 S.C. 355, 361, 660 S.E.2d 264, 267 (2008) (citations omitted).

The proposed ordinance seeks to make it unlawful for any person to violate certain state traffic laws, all of which are part of the Uniform Act Regulating Traffic on Highways (the "UTA"), S.C. Code

§§ 56-5-10 et seq. A violation of the proposed ordinance is punishable by fine in an amount between one hundred and three hundred dollars.

Article VIII, § 14 of the South Carolina Constitution provides that when enacting ordinances, local governments shall not set aside general law provisions applicable to, *inter alia*, "criminal laws and the penalties sanctions for the transgression thereof ...." S.C. Code § 56-5-30 of the UTA provides the following with regards to the local regulation of traffic:

> The provisions of this chapter shall be applicable and uniform throughout this State and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any ordinance, rule or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may, however, subject to the limitations prescribed in § 56-5-930, adopt additional traffic regulations which are not in conflict with the provisions of this chapter.

§ 56-5-30. The question thus becomes whether the proposed ordinance, if enacted, would set aside criminal penalties established by State law. We believe that it would.

The UTA sets forth numerous traffic offenses and prescribes the penalties for violations thereof. For example, a person convicted of a first offense speeding violation pursuant to § 15-5-1520(G) may be punished by a fine of fifteen to twenty-five dollars for the least offense under that subsection, and a fine of seventy-five to two hundred dollars or imprisonment for not more than thirty days for the greatest offense. A person convicted of a first offense for failing to stop when signaled by a law enforcement officer "must be fined not less than five hundred dollars or imprisoned for not less than ninety days nor more than three years." § 56-5-750(B)(1). A violation of any provision of the UTA for which a penalty is not specifically set forth is punishable "by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days." § 56-5-6190.

Numerous opinions of this Office have concluded that a local ordinance which imposes greater or lesser penalties than that provided for identical unlawful acts under State law are invalid. See, e.g., Ops. S.C. Att'y Gen., 2008 WL 317749 (Jan. 15, 208) ("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"); 2003 WL 164476 (Jan. 3, 2003) ("local ordinances which impose lesser penalties than State law for the possession and sale of drugs and narcotics are void"); 2001 WL 957755 (Aug. 15, 2001) (noting Article VIII, § 14 has been construed by the S.C. Supreme Court as providing that "local governments may not enact ordinances that impose greater or lesser penalties than those established by state law") (citations omitted).

Our Supreme Court addressed a situation analogous to the one at hand in City of N. Charleston v. Harper, 306 S.C. 153, 410 S.E.2d 569 (1991). In that case, the City enacted an ordinance making simple possession of marijuana an offense for which the person convicted "*shall be sentenced to thirty (30) days in jail....*" Id. at 155, 410 S.E.2d at 570 (emphasis in original). On other hand, the same offense was punishable under State law by up to thirty days in prison or a fine of a one hundred to two hundred dollars. Id. (citing § 44-53-370(c), (d)). The Court found the City lacked the authority to enact the ordinance, stating:

> The legislature has provided parameters within which local governments may enact ordinances dealing with the criminal offense of simple possession of marijuana. This legislation occupies the field as far as penalties for this offense are concerned. Local

> governments may not enact ordinances that impose greater or lesser penalties than those established by these parameters. City Code § 13-3 exceeds the parameters established under state law by denying offenders the opportunity to pay a fine and thus avoid a jail sentence. The City has attempted to set aside a penalty the legislature has found to be appropriate to punish persons guilty of simple possession. Accordingly, we hold City Code § 13-3 violates the strictures of Article VIII, § 14 of the South Carolina Constitution.

Id. at 156, 410 S.E.2d at 570-71.

Here, the Legislature has expressly provided the parameters within which local governments may enact ordinances dealing with the regulation of traffic. See § 56-5-30, supra; see also Aakjer v. City of Myrtle Beach, 388 S.C. 129, 134, 694 S.E.2d 213, 215 (2010) ("In S.C. Code Ann. § 56-5-30 ... the General Assembly authorized local authorities to act in the field of traffic regulation if the ordinance does not conflict with the provisions of the Uniform Traffic Act"). The UTA has occupied the field of traffic regulation as far as penalties for violations of the UTA are concerned. The proposed ordinance imposes a fine which, in many or most cases, is either greater or less than the penalties permitted for the numerous traffic offenses set forth in the UTA. Consistent with authorities previously mentioned, the proposed ordinance, if enacted, would violate Article VIII, § 14 of the S.C. Constitution. Therefore, we believe the City lacks the authority to enact the proposed ordinance.

Furthermore, we believe the proposed ordinance, if enacted, would conflict with the various provisions of the UTA referenced therein. The UTA authorizes local governments to adopt "*additional* traffic regulations which are not in conflict with the provisions of this chapter." § 56-5-30 (emphasis added). Local governments are not authorized to adopt traffic regulations which are *duplicative* of, or *identical* to, the regulations imposed by the UTA. See 56 Am. Jur. 2d Municipal Corporations, Etc. § 316 ("A conflict between state law and a local ordinance exists if the ordinance *duplicates*, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication") (emphasis added); 6 McQuillin Mun. Corp. § 26:11 (3d. ed.) ("In various jurisdictions, where a subject is covered by statute, a municipal corporation cannot deal with it by ordinance, unless expressly authorized"). Therefore, we believe local governments are prohibited from enacting ordinances making it unlawful to commit traffic violations which are already expressly unlawful under the UTA. Thus, it is our opinion that the proposed ordinance in question, if enacted, would be void as in conflict with the UTA.

Sincerely,

Harrison D. Brant
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General