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CHARLES MOLONY CONDON
ATTORNEY GENERAL

April 2, 1996

The Honorable Julian L. Kelly
Mayor, Town of Pawley's Island
Post Office Box 1818
Pawley's Island, South Carolina 29585

Re: Informal Opinion

Dear Mayor Kelly:

You note that "[t]he City of Pawley's Island has been confronted with various groups seeking to direct the Police Department in the enforcement of State traffic laws and municipal ordinances." You further state as follows:

> [w]e are concerned that if some of the directions being proposed are given to our law enforcement officers, it might be construed as obstruction of justice. I would appreciate it if you would answer the following questions on this issue, and any other insights you might have regarding the direction of the Police Department to enforce, or not enforce, certain laws and state statutes would be most helpful.

1. May the Municipal Police Department be directed not to give summons against motorists who are exceeding the posted speed limit when the policeman who observes such offense has his police vehicle in a stopped or parked position?

2. May the Police Department be directed to only issue summons for speeding violations from a marked police vehicle as opposed to an unmarked police vehicle?

3. May the Police Department be ordered not to issue summons after a certain level of revenue has been reached from the issuance of summons or traffic violations?

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Request Letter

4. If it is impermissible to direct the Municipal Police Department as indicated in the questions above, is the person who directs the Police Department not to issue summons guilty of obstruction of justice or any other crime or infraction?

It must be remembered that the interpretation of local ordinances or policy directives is primarily for local officials through their attorney. This Office neither has the authority, nor is in a position to interject itself into local questions of policy. We are not present at council meetings, nor are we privy to council debates. Further, we have no intention of superseding the advice of the town attorney who regularly advises council. Within that framework, I will attempt to set forth the law as it relates to this matter.

S.C. Code Ann. Section 5-7-110 provides in pertinent part as follows:

> [a]ny municipality may appoint or elect as many police officers, regular or special, as may be necessary for the proper law enforcement in such municipality and fix their salaries and prescribe their duties.
>
> Police officers shall be vested with all the powers and duties conferred by law upon constables, in addition to the special duties imposed upon them by the municipality. (emphasis added).

The cardinal rule of statutory interpretation is to ascertain the legislative intent whenever possible. Bankers Trust of S.C. v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design and policy of the lawmakers. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). Full effect must be given to each section of a statute, words therein must be given their plain meaning, and phrases must not be added or taken away in the absence of ambiguity. Hartford Acc. & Indemnity Co. v. Lindsay, 273 S.C. 79, 254 S.E.2d 301 (1979).

Section 5-7-110 specifically bestows upon all police officers "the powers and duties conferred by law upon constables" within their jurisdiction. Our Court has recognized that a constable, pursuant to Section 23-1-60 (as well as common law) is vested with "all the powers of a peace officer of the State." State v. Luster, 178 S.C. 199, 204, 182 S.E. 427 (1935). Section 5-7-110 also clearly states that the municipality may prescribe "special duties" in addition to the powers given police officers by state law. Clearly, as here, where "the powers ... of police officers ... are ... defined by statute ..., inconsistent powers

may not conferred by ordinance" or otherwise. McQuillin, Municipal Corporations, § 45.15. Moreover, "[c]onsiderable latitude "must be allowed a police chief in "the deployment of his or her officers ...". Id. at 45.08.

On the other hand, we have previously noted that Section 5-7-110 gives municipalities broad authority with respect to a municipal police department. A municipality is not required by the statute to establish a police force if it does not choose to do so. Op. Atty. Gen., No. 92-67 (November 6, 1992). In that light, it has been stated that

> [t]he authority to establish a police force would be futile if it did not carry with it, at least by implication, the authority to enact reasonable rules for the effective administration of the force and to compel obedience to them by reasonable means. Consequently, subject to the rule that, in jurisdictions in which matters pertaining to the police department are considered to be of state-wide concern, or the rule that local regulations may not conflict with state law, it is within the power of the board or body in control or the municipal authorities to prescribe rules and regulations for the government and to enforce them.

McQuillin, Id at §45.07.25. See also, 62 C.J.S., Municipal Corp., § 563. Moreover, if a municipal council takes action by ordinance, like any other legislative enactment, the Court will presume the validity of that ordinance. Town of Scranton v. Willoughby, 306 S.C. 421, 412 S.E.2d 424 (1992). Thus, the Court will afford any validly enacted ordinance considerable leeway. While this Office may comment upon the constitutionality of a legislative enactment, only a court may declare an ordinance invalid.

Courts have held that a municipality may require by ordinance that a police chief implement procedures concerning the enforcement of laws relating to parking meters, traffic control devices, speeding and possession of a valid driver's license. Cogswell v. Town of Logansport, 321 So.2d 774 (La. 1975). Courts have also concluded that the municipality could require the police to check the doors of all businesses at least once each night. Id. Moreover, a municipality can regulate the uniforms of its policemen as well as its property, including the use of its police vehicles. See, Slocum v. Fire and Pol. Comm., 290 N.E.2d 28 (Ill. 1972); Op. Atty. Gen., Op. No. 4083 (August 18, 1975) [absent a municipal ordinance to the contrary, police chief can determine what is a "police vehicle.]. We have stated that a political subdivision may manage and control its property and may determine the markings of its law enforcement vehicles and the equipment its officers and employees use. Op. Atty. Gen., November 8, 1963. It has been held that it

is reasonable to require marked police vehicles, Poole v. Louisville, 130 S.E.2d 157 (Ga. 1963), and "[m]unicipal police officers charged exclusively with traffic control and regulation have been required to wear distinctive uniforms and to use marked automobiles while on duty." McQuillin, supra at § 45.15. Moreover, municipal powers are deemed particularly broad with respect to the police department where the regulation involves municipal property such as police cars. La. Atty. Gen. Op. No. 90-369 (August 15, 1990) [within the authority of the municipality to determine that police vehicles could leave the jurisdiction only under certain specified conditions].

In City of Dayton v. Adams, 223 N.E.2d 822 (Ohio 1967), the Ohio Supreme Court reviewed an Ohio statute which required any motor vehicle used by the state highway patrol or any other police department, where such vehicle was being used primarily for traffic control or enforcement of the motor vehicle laws, to be properly marked. The enforcement mechanism for the law was deeming the officer who worked a traffic case in an unmarked vehicle incompetent to testify. In Adams, a Dayton police officer stopped an individual for speeding in a properly marked vehicle. However, his associate worked the radar device from a stationary, unmarked vehicle. The Court concluded that the officer in the marked vehicle was competent to testify, but the officer on duty in the unmarked vehicle was not.

The Court examined the intent of the Ohio statute and concluded:

> [t]he intent of the Legislature in enacting this provision of law was to provide uniformity in traffic control and regulation in an effort to make driving safer in all political subdivisions within the state. As Judge Herbert, speaking for a unanimous court stated in City of Cleveland Heights v. Woodle, 176 Ohio St. 113, at page 116, 198 N.E.2d 68, at page 70:
>
> > "... uniformity is essential both for traffic safety and for efficient traffic regulation."
>
> It was also the intent of the Legislature, in part, in enacting this provision of law, to put a curb upon the speed traps which were often operated by "peace officers" of the municipalities and townships.

223 N.E.2d at 823-824.

Admittedly, this case involved a state statute, not a municipal ordinance or municipal regulation. However, the Court found that the purpose of such regulation -- uniformity in traffic control enforcement -- was a reasonable purpose. While it can be argued that the regulation of enforcement of speeding violations by the Town might be inconsistent with state law or interfere with police discretion, I cannot conclude that such regulation would be invalid, based upon the foregoing authorities. As noted, the Court would give any such ordinance the presumption of validity. Moreover, I am aware of no state statute which expressly requires speeding laws to be enforced in unmarked cars or that enforcement of the speeding laws must be from a vehicle which is in a parked or still position. Compare Section 56-5-760 [an authorized emergency vehicle used as a police vehicle need not "use an audible signal nor display a visual signal" when being used to "obtain evidence of a speeding violation".] Thus, I cannot conclude that such a policy as you have outlined would be invalid or is inconsistent with state law. It is a "judgment call" for the Town Council to make, seeking the advice of the town attorney and, I trust, in a mutually cooperative spirit between the council and the police department.

As the Ohio Court strongly suggested in Adams, while all state laws and municipal ordinances must be enforced vigorously to the extent that manpower will allow, such laws must also be enforced uniformly, evenhandedly and with a certain amount of judgment and discretion. It is clearly against public policy to enforce the law for monetary gain, revenue or any other reason than the protection of the citizenry. See, City of Park Ridge v. Begg, 443 N.E.2d 222, 226 (Ill. 1982) Johnson, specially concurring), affd., Begg v. Bd. of Fire and Police Commrs., 459 N.E.2d 925 (Ill. 1984). Obviously, where a municipality seeks in good faith to exercise its legislative authority to regulate its police department, such would not constitute "obstruction of justice."

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General

RDC/ph