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OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

October 21, 1997

The Honorable Morris L. Davenport
Mayor, Town of Saluda
Post Office Box 675
Saluda, South Carolina 29138

Re: Informal Opinion

Dear Mayor Davenport:

Attorney General Condon has forwarded your opinion request to me for reply. In your opinion request, you reference a proposed parking ordinance for the Town of Saluda and request an opinion on its validity.

You have stated that "the Ordinance seeks to address and remedy the parking problems created in out [sic] downtown business area by merchants and employees of merchants who occupy parking spaces for extended periods of time which otherwise would be used by patrons of the businesses in that area." Section 1 of the ordinance reads as follows:

> No person employed by or operating a business or profession in that part of the Town of Saluda in the downtown area which is hereinafter more particularly designated shall park a privately owned or company-owned motor vehicle on any public right-of-way, whether it be an alley or a street except for the purpose of using such parking for no more than (15) fifteen minutes for loading and unloading which the owner or operator performs as a part of his or her duties at his or her regular place of employment in such downtown area. The provisions of this section shall be effective between 9:00 a.m. and 6:00 p.m., Monday through Saturday of each week.

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Request Letter

Generally, a municipality is recognized as being empowered to regulate the time, place and manner of parking in its streets and public places. McQuillin Municipal Corporations § 24.641. Moreover, the authority of a municipality in this State to regulate parking on its streets is expressly provided by statute. Sections 5-29-30 and 56-5-710 of the South Carolina Code of Laws. In Hall v. Burg, 206 S.C. 173, 33 S.E.2d 401 (1945), the Supreme Court recognized that the regulation of traffic, including the parking of automobiles, is a proper exercise of a municipality's police power. See also 60 C.J.S. Motor Vehicles § 28(1); City of Orlando v. Cullum, 400 So.2d 513 (1981).

It is generally recognized that inherent in a municipality's authority to regulate its streets and keep them free from obstructions is the authority to regulate parking of motor vehicles with respect to the length of time a vehicle may be parked. 60 C.J.S. Motor Vehicles § 28(1). In Owens v. Owens, 193 S.C. 260, 8 S.E.2d 339 (1940), the Supreme Court was faced with a challenge to an ordinance of the City of Columbia which provided for the maintenance of parking meters. In its decision upholding the ordinance, the Court stated:

> . . . while the public has an absolute right to the use of the streets for their primary purpose, which is for travel, the use of the streets for the purpose of parking automobiles is a privilege, and not a right; and the privilege must be accepted with such reasonable burdens as the city may place as conditions to the exercise of the privilege.

The Court further recognized that:

> Since there can be no doubt of the right to regulate parking, the city should have a wide latitude in selecting the means to be adopted . . ..
>
> A regulatory ordinance relating to the parking of cars will be presumed to be justified by local conditions, unless the contrary clearly appears. Much should be left to the city's discretion.

While a municipality is authorized to regulate parking, such regulations have been determined to be invalid if they are arbitrary and discriminatory. McCoy v. Town of York, 193 S.C. 390, 8 S.E.2d 905 (1940); 60 C.J.S. Motor Vehicles § 28(1). It is generally held that:

> A parking ordinance must be uniform in operation and not oppressive or discriminatory ... it can adopt a reasonable classification with respect to times, places or vehicles within its operation. Thus, a prohibition of parking in a certain

street or at a certain place need not include all vehicles, in order to be valid, where there is a reasonable basis for the distinction, germane to a legitimate object of the regulation. McQuillin Municipal Corporations § 24.642.

Consistent with the above, ordinances have been enacted so as to forbid or limit the time allowed to park in restricted areas such as congested districts or downtown districts during business hours. Municipal regulations directed at hastening the departure of parked vehicles in congested areas have been recognized as being valid. McQuillin Municipal Corporations § 24.646. Such regulations are consistent with the recognized principle that the authority to make traffic regulations includes the authority to make them fit to existing conditions and to make exceptions to that end. Commonwealth v. Sargent, 117 N.E.2d 154 (1953). In determining reasonableness of traffic regulations, factors such as the need for parking in a particular locality and the availability of space elsewhere are among the variables to be considered. Id. Therefore, certain parking classifications which discriminate in parking availability may not necessarily be irrational or arbitrary. City of Akron v. Davies, 170 N.E.2d 494 (1959).

In State v. Perry, 130 N.W.2d 343 (1964), the Minnesota Supreme Court dealt with a challenge to a municipal parking ordinance which was alleged to be unconstitutional. The ordinance prohibited parking upon any street within the city for more than two consecutive hours within a designated period. In its decision upholding the statute the court commented that the purpose behind regulations permitting parking for only a limited time is ". . . to keep parking space fluid and to guarantee householders, merchants, and their invitees reasonable access for transacting business."

Referencing the above, since we have found no general law in conflict therewith, it appears that the ordinance of the Town of Saluda which limits the availability of parking for employees and operators of businesses in the downtown area could be upheld as being valid. While it does discriminate against the referenced individuals, such discrimination is not necessarily irrational or arbitrary. Instead, it could be asserted that the need to increase the availability of parking in an area where parking is at a premium is a rational basis for such a restriction and therefore such a restriction is warranted. See also Op. Atty. Gen. dated April 5, 1985 (finding that a City of Kingstree parking ordinance limiting parking for owners and employees of businesses in the downtown area could be upheld as valid).

This letter is an informal opinion only. It has been written by a designated assistant 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 kindest regards, I remain

Very truly yours,

Paul M. Koch

Paul M. Koch
Assistant Attorney General