

4100 Lit

The State of South Carolina



Office of the Attorney General

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May 15, 1990

The Honorable Harvey S. Peeler, Jr.
Senator, District No. 14
Post Office Box 142
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Gressette Senate Office Building
Columbia, South Carolina 29202

Dear Senator Peeler:

In a letter to this Office you questioned the legality of a municipal or county ordinance making the offenses of resisting arrest, codified as a State statutory offense at Section 16-9-320(A) of the Code, and pointing a firearm, codified as a State statutory offense at Section 16-23-410 of the Code, offenses triable by a magistrate or municipal court judge with a fine and term of imprisonment of two hundred (\$200.00) dollars or thirty (30) days. By State law the offense of resisting arrest is punishable by a fine of not less than five hundred dollars nor more than one thousand (\$1,000.00) dollars or a term of imprisonment of not more than one year or both. The State statutory offense of pointing a firearm is punishable pursuant to Section 17-25-30 by a maximum term of imprisonment of ten (10) years. See: State v. Meek, 286 S.C. 553, 335 S.E.2d 237 (1985).

Pursuant to Section 5-7-30 of the Code

Each municipality of the State...may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State... The municipal governing body may fix fines and penalties for the violation of municipal ordinances and regulations not exceeding two hundred dollars or imprisonment not exceeding thirty days... (emphasis added.)

The Honorable Harvey S. Peeler, Jr.
Page 2
May 15, 1990

Counties are granted similar authority pursuant to Section 4-9-25 of the Code.

A prior opinion of this Office dated February 8, 1990 stated

Counties and municipalities are political subdivisions of the State and have only such powers as have been given to them by the State, such as by legislative enactment...Such political subdivisions may exercise only those powers expressly given by the State Constitution or statutes, or such powers necessarily implied therefrom, or those powers essential to the declared purposes and objects of the political subdivision...In doing so, however, political subdivisions cannot adopt an ordinance repugnant to the State Constitution or laws, which ordinance would be void... .

Therefore, municipalities and counties are not free to adopt an ordinance which is inconsistent with or repugnant to general laws of the State. See: Law v. City of Spartanburg, 148 S.C. 229, 146 S.E. 12 (1925). A prior opinion of this Office dated September 1, 1988 stated

...police ordinances in conflict with statutes, unless authorized expressly or by necessary implication, are void. A charter or ordinance cannot lower or be inconsistent with a standard set by law... Even where the scope of municipal power is concurrent with that of the state and where an ordinance may prohibit under penalty an act already prohibited and punishable by statute, an ordinance may not conflict with or operate to nullify state law... Ordinances lowering or relaxing statutory standards relative to offenses are void as in conflict with state law and policy... .

An opinion of this Office issued March 1, 1977 indicated "...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."

The Honorable Harvey S. Peeler, Jr.
Page 3
May 15, 1990

As to the authority of a municipality to enact an ordinance making the offense of resisting arrest an offense within the trial jurisdiction of a municipal court, another prior opinion of this Office dated June 8, 1978 referenced that such offense was a common law offense punishable by a term of imprisonment of ten (10) years. (The offense was codified in 1980 as a statutory offense.) The opinion stated

Since the possible penalties upon conviction exceed the maximum permitted in the municipal courts, such courts could not lawfully assume trial jurisdiction over the offense...(The municipal ordinance at issue)...attempts to make the matter one of municipal concern and therefore provide an alternative to the general laws of the State regarding resisting arrest...(The ordinance)...is in apparent conflict with the general law of the State and therefore must yield in favor of the general law. Therefore, the municipal court could not lawfully assume trial jurisdiction over cases of resisting arrest.

Consistent with the above, a county or municipality would not be authorized to enact an ordinance making the offenses of resisting arrest or pointing a firearm offenses within the trial jurisdiction of a magistrate or municipal court judge.

If there is anything further, please advise.

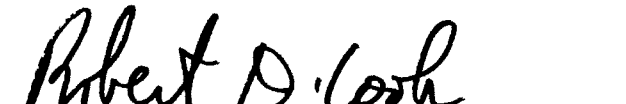
Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR/nnw

REVIEWED AND APPROVED BY:


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